

# Submittal of Additional Information on the State's Measures for Agricultural Sources in response to Federal Findings of January 1998

**December 2002**

This information is submitted to NOAA and EPA for review and for the purpose of establishing full compliance with the agricultural sources management measures of Section 6217 of The Coastal Zone Act Reauthorization Amendments of 1990.

The conditional approval of the states Coastal Nonpoint Pollution Control Program (CNPCP) Submittal contained the following findings, conditions, and rationale for the Management Measures for Agricultural Sources (Noted in *Italics*):

## **II. AGRICULTURE**

### **Introduction**

In Oregon's coastal zone (Attachment 1), agriculture makes up a small percentage (8%) of land being actively farmed. However, Oregon ranks number four in cranberry production, number three in bulbs, and number one in Christmas trees grown in the United States. These crops, with the exception of Christmas trees, are grown exclusively within the CNPCP area.

The coastal valleys support the majority of agricultural use, which is composed of grazing, haying, and dairy operations.

Most of the CNPCP area is unsuitable for traditional farming due to poor soils, excessive slopes, saltwater intrusion, and cool, wet weather patterns which are not favorable to cropping. By far, the biggest land use within the CNPCP area is forestry, which is better suited to the climate and soils.

### **A. CONFINED ANIMAL FACILITIES (Large and Small Units)**

**FINDING:** *Oregon's program for confined animal facilities includes management measures in conformity with the 6217(g) guidance and enforceable policies and mechanisms to ensure implementation throughout the 6217 management area for confined animal facilities where animals are confined for four months or more and where waste water control facilities are present. The State does not have management measures for facilities where animals are confined for less than four months and that do not have prepared surfaces or wastewater control facilities. For these facilities, the State has identified backup enforceable authority, but has not demonstrated the ability of the authority to ensure implementation throughout the 6217 management area.*

**CONDITION:** *Within two years, Oregon will include in its program management measures in conformity with the 6217(g) guidance for facilities where animals are confined for less than four months and that do not have prepared surfaces or wastewater control facilities. Also, within two years, Oregon will provide a strategy (in accordance with Section XII, pages 19-20) for use of the State's water quality law (ORS 468B) as a back-up enforceable mechanism to ensure implementation of management measures for confined animal facilities as proposed on pages 48-50 of the State's program submittal.*

**RATIONALE:** *Existing State authorities to regulate confined animal facilities provide for practices that implement the management measures for most facilities. The existing program is enforceable through permits and other procedures, including civil penalties for violations. The existing permit process, however, excludes facilities of four months or less duration and facilities without a prepared surface and without wastewater treatment works. The State has proposed that its general water quality law (ORS 468B) could be used to address these exempted facilities (ORS 468B.050 (1) (a) prohibits discharge of waste into state waters from any industrial or commercial establishment or activity without a permit); however, the State has not explained how it will use this general authority to ensure implementation of the management measure for such facilities. In discussions with NOAA and EPA, the State has also proposed addressing such facilities in AgWQMPs developed under SB1010. NOAA and EPA encourage the State to pursue this effort.*

**STATE PROPOSAL:** The following information is submitted in an attempt to resolve these issues sufficiently for the condition of approval on this management measure to be lifted.

The Oregon Department of Agriculture's (ODA) Confined Animal Feeding Operations (CAFO) program has recently been expanded by the state legislature to come into compliance with EPA's CAFO regulations. This has expanded the definition of a CAFO to include EPA's definition. The new definition removes the exclusion of CAFOs that have facilities where animals are confined for four months or less duration and facilities without a prepared surface and without wastewater treatment works.

The following definition is taken directly from House Bill 2156 (HB 2156) (Attachment 2), which was passed by the 2001 Oregon Legislature:

***"SECTION 7. ORS 468B.205 is amended to read: 468B.205. (1) As used in ORS 468B.200 to 468B.230, "confined animal feeding operation" [means the concentrated confined feeding or holding of animals or poultry, including, but not limited to horse, cattle, sheep or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms, in buildings or in pens or***

*lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather or which have waste water treatment works] **has the meaning given that term in rules adopted by the State Department of Agriculture or the Department of Environmental Quality. The definition must distinguish between various categories of animal feeding operations, including but not limited to those animal feeding operations that are subject to regulation under 33 U.S.C. 1342.***

The state's policy, ORS 468B.200, is to protect the quality of the waters of this state by preventing animal wastes from discharging into waters of the state. This includes permitted and non-permitted CAFOs. In further defining the state's CAFO program, wastewater is defined as all manure, silage pit drainage, washdown waters, contaminated precipitation, milk, and bulk tank wastewater. ORS 468B.005 (4). Wastewater treatment works are defined in ORS 468B.005 (6) and disposal systems are defined in ORS 468B.005 (1) as all or any part of a system or systems used in connection with a CAFO or holding operation for the:

- Collection, retention, treatment, and disposal of liquid wastes or contaminated drainage waters, or;
- Collection, handling, storage, treatment or processing and disposing of liquid manure.

To provide some history of the state's CAFO enforcement program, in 1998, ODA shifted its emphasis from a complaint response system of inspections to a routine annual inspection program for permitted CAFOs. Since June 1999, ODA has committed to inspecting all permitted CAFOs at least once annually. ODA also includes the following language in each set of Oregon Administrative Rules associated with each of the seven Agriculture Water Quality Management Area Plan (AgWQMP) planning areas throughout Oregon's CNPCP area: "Effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or ORS 468B.050." These sections of ORS 468B state:

***"468B.025 Prohibited activities. (1) Except as provided in ORS 468B.050 or 468B.053, no person shall:***

***(a) Cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means.***

***(b) Discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality standards established by rule for such waters by the Environmental Quality Commission.***

***(2) No person shall violate the conditions of any waste discharge permit issued under ORS 468B.050.***

***(3) Violation of subsection (1) or (2) of this section is a public nuisance.***

*[Formerly 449.079 and then 468.720; 1997 c.286 §5]*

***“468B.050 When permit required. (1) Except as provided in ORS 468B.053 or 468B.215, without first obtaining a permit from the Director of the Department of Environmental Quality or the State Department of Agriculture, which permit shall specify applicable effluent limitations, no person shall:***

*(a) Discharge any wastes into the waters of the state from any industrial or commercial establishment or activity or any disposal system.*

*(b) Construct, install, modify or operate any disposal system or part thereof or any extension or addition thereto.*

*(c) Increase in volume or strength any wastes in excess of the permissive discharges specified under an existing permit.*

*(d) Construct, install, operate or conduct any industrial, commercial, confined animal feeding operation or other establishment or activity or any extension or modification thereof or addition thereto, the operation or conduct of which would cause an increase in the discharge of wastes into the waters of the state or which would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized.*

*(e) Construct or use any new outlet for the discharge of any wastes into the waters of the state.*

*(2) As used in this section, "confined animal feeding operation" has the meaning given that term in rules adopted by the State Department of Agriculture or the Department of Environmental Quality. [Formerly 449.083 and then 468.740; 1997 c.286 §6; 2001 c.248 §4]*

The state's current CAFO permit is a Water Pollution Control Facilities (WPCF) Permit. Most facilities are registered to the General 0800 WPCF Permit (Attachment 3), although there are a few facilities permitted under individual WPCF permits.

This permit requires, as special condition number 1, that “All manure, silage pit drainage, washdown waters, contaminated precipitation, and other contaminated wastewater shall be distributed on land for dissipation by evapotranspiration at agronomic application rates. For purposes of planning, designing, and implementation of a resource management system, components should be extracted from the Oregon Animal Waste Installation Guidebook, written by the Soil Conservation Service (now the Natural Resources Conservation Service)...” In the permit's special condition number 7, it is required that “When manure is spread on land, care shall be taken to assure that the land application rate does not exceed the agronomic utilization rate for the nutrients in the manure...”

Moreover, in accordance with the new legislation, ODA is developing a National Pollution Discharge Elimination System (NPDES) permit to replace the current WPCF permits.



The Oregon legislature in 2001 directed ODA to make changes in the way complaints are handled and to conduct an educational outreach program. ODA's current CAFO enforcement and complaint is identified in ORS 603-074 as follows:

*"Notwithstanding that each and every violation is a separate and distinct offense, and in cases of continuing violations, that each day's continuance is a separate and distinct violation unless otherwise determined by the department, proceedings for the assessment of multiple civil penalties for multiple violations against an owner or operator may be consolidated into a single proceeding.*

*(1) In addition to any other penalty provided by law, the department may assess a civil penalty against the owner or operator of a confined animal feeding operation for failure to comply with a provision of ORS Chapter 468 or 468B or any rule adopted under or a permit issued under ORS Chapter 468 or 468B, relating to the control and prevention of water pollution from a confined animal feeding operation. The amount of the civil penalty shall be determined using the two matrices contained in OAR 603-074-0080 in conjunction with the formula contained in OAR 603-074-0080(4).*

*(a) Except for those animal feeding operations defined in OAR 603-074-0010(3) (b), the amount of the initial civil penalty may not exceed \$2,500 and any subsequent civil penalties for a repeat occurrence may not exceed \$10,000 per violation.*

*(b) For those animal feeding operations defined in OAR 603-074-0010(3) (b), civil penalties may not exceed \$5,000 per violation and any subsequent civil penalties for a repeat occurrence may not exceed \$10,000 per violation".*

It also directs ODA to adopt by rule definitions of different classes of CAFOs. Establishing the new definition of CAFO in accord with this new law was necessary for ODA to demonstrate that it has the authority to assume enforcement responsibilities for CAFOs and Animal Feeding Operations (AFOs) in Oregon that are currently enforced by EPA. ODA's AFO program includes management measures for agricultural water quality management areas, grazing, nutrient management, and irrigation management in Sections B.1 through B.3 and B.5. of this submittal.

In addition, ODA has adopted OARs 603-074-0005 through 603-074-0085 (Attachment 4) that currently governs the program and implements House Bill 2156. In so doing, Oregon has provided a strategy (in accordance with Section XII, pages 19-20) for use of the State's water quality law (ORS 468B) as a back-up enforceable mechanism to ensure implementation of management measures for confined animal facilities as proposed on pages 48-50 of the State's program submittal.

These authorities are applicable statewide and are implemented under ORS 468B.200 through 468B.230 and OARs Chapter 340 Division 51 and OARs 603 Division 74 (Attachment 5).

House Bill 2156 also directs ODA to pursue delegated authority from EPA to administer that portion of the Clean Water Act related to livestock and other animal-based agricultural operations. Representatives from EPA were involved in discussions during development and passage of this bill. The department will be seeking formal delegation from the EPA to operate the CAFO program under the Federal Clean Water Act. As of December 2002 this delegation has not been attained from the EPA.

As part of ODA's commitment to the new CAFO rulemaking process, two new CAFO inspector positions have been created and staff has been hired to fill them. One of the new positions will service the southern part of the CNPCP, and existing staff will service the mid-coast CNPCP area. Another inspector based in Tillamook (Attachment 6) will service the northern part of the CNPCP.

The CAFOs to be covered by this general permit have the potential to discharge to a variety of receiving streams. Most of these streams are listed as water quality limited for dissolved oxygen and temperature and many for bacteria. While CAFOs have the potential to discharge a variety of pollutants as discussed in the previous section, the CAFO general permit only allows the discharge of waste or wastewater to surface waters during either chronic or catastrophic rainfall events. This is defined as a 25-year, 24-hour storm event, including tornados, hurricanes, or other catastrophic conditions that would cause an overflow from the waste control facility. This is essentially a "no discharge" technology-based effluent limit required by the federal EPA. The department does not expect waterbodies to exceed water quality standards as a result of CAFO discharges during chronic or catastrophic rainfall events because of high flows in the receiving waterbody and diluted nature of the wastewater at the time of discharge.

Permit coverage under the NPDES CAFO general permit may also be terminated if Total Maximum Daily Loads (TMDLs) are established and a CAFO's discharge during chronic rainfall or catastrophic events is determined to be a contributor to a stream that is water quality limited. In these situations, an individual permit or different general permit may be required that would include waste load allocations.

## **B. AGRICULTURAL WATER QUALITY MANAGEMENT AREA PLANS**

**FINDING:** *The State's program for these agricultural subcategories does not include management measures in conformity with the 6217(g) guidance. Oregon has identified an enforceable authority for these management measures, but has not demonstrated the ability of the authority to ensure implementation throughout the 6217 management area.*

**CONDITIONS:** *Within one year, Oregon will (1) designate agricultural water quality management areas (AgWQMAs) that encompass agricultural lands within the 6217 management area, and (2) complete the wording of the alternative*

*management measure for grazing, consistent with the 6217(g) guidance. Agricultural water quality management areas plans (AgWQMPs) will include management measures in conformity with the 6217(g) guidance, [3] including written plans and equipment calibration as required practices for the nutrient management measure, [4] and a process for identifying practices that will be used to achieve the pesticide management measure. [5] The State will develop a process to incorporate the irrigation water management measure into the overall AgWQMPs. [6] Within five years, AgWQMPs will be in place.*

**RATIONALE:** *The Oregon Department of Agriculture (ODA) has the authority, under SB1010, enacted in 1993, to establish boundaries of AgWQMAs and develop AgWQMPs when such plans are required by a provision of State or federal law. Individual landowners are required to comply with the provisions of the AgWQMPs. This program appears promising, and implementation of AgWQMPs has the potential to ensure implementation of the management measures. The content of the AgWQMPs, their linkage to the 6217 management measures, and their effectiveness, are not yet known. AgWQMPs need to be in place by the year 2001, when the time period for conditional approval ends, and should be fully implemented by 2004, in accordance with the timeframe for implementation described in Flexibility for State Coastal Nonpoint Programs (NOAA and EPA, March 1995).*

*To achieve the goals of the nutrient management and pesticide management measures, AgWQMP elements related to nutrient management and pesticides must contain the components specified in the above condition. For the irrigation water management measure, NOAA and EPA encourage the ODA to pursue its plan to coordinate with the Oregon Water Resources Department to facilitate the development of subbasin water conservation plans, including measurements of water needed and applied, and to incorporate the conservation plans into the overall AgWQMP to achieve the irrigation management measures. Conservation planning will result in important water quality responses that should be addressed to the extent practicable through the AgWQMPs. Finally, the State proposed an alternative management measure for grazing that is as effective as the 6217(g) guidance measure, but the State has not completed the wording of the component of this measure for upland erosion on privately owned lands.*

**STATE PROPOSAL:** The following information is submitted in an attempt to resolve these issues sufficiently for full approval.

The Agricultural Water Quality Management Program administered by the Oregon Department of Agriculture's Natural Resources Division, is responsible for addressing water pollution associated with agricultural lands and activities. The Agricultural Water Quality Management Program has evolved in response to requirements under various state and federal laws, such as the Federal Clean Water Act.

Until 1993, the ODA addressed agricultural water quality concerns primarily through the CAFO, the Container Nursery Irrigation Water Management Program, several voluntary watershed plans, and through landowner assisted activities associated with Soil and Water Conservation Districts (SWCD).

In 1993, the Oregon Legislature passed Senate Bill 1010 (ORS 568.900 - 568.933), or the Agricultural Water Quality Management Act, which provides for ODA to be the lead state agency working with agriculture to address water pollution from agricultural activities and soil erosion. Through the Agricultural Water Quality Management Act (AgWQM Act), ODA is authorized to develop and carry out a water quality management plan for any agricultural or rural lands area whenever a water quality management plan is required by state or federal law. Other Oregon Revised Statutes (ORS) referenced in the department's water quality program are ORS 468B.025 through 468B.050.

In 1995, the Oregon Legislature passed Senate Bill 502 (ORS 561.191) which stipulates that ODA "shall develop and implement any program or rules that directly regulate farming practices that are for the purpose of protecting water quality and that are applicable to areas of the state designated as exclusive farm use zones or other agricultural lands." The implications of this legislation are that in Oregon, ODA is the agency solely responsible for regulating agricultural activities that affect water quality.

The AgWQM Act watershed planning process is begun by ODA once water quality issues in a watershed have been identified and state or federal law requires a watershed plan. One example of such a "trigger" for the planning process is a listing under Section 303(d) of the Federal Clean Water Act. The Federal Clean Water Act requires each state to identify streams, rivers and lakes that do not meet water quality standards. States are required to establish a list of those that are water quality limited. The Oregon Department of Environmental Quality (DEQ) has updated the state's "water quality limited" list to include over 1000 stream segments that do not meet water quality standards. Watersheds on this list are candidates for involvement by ODA through the AgWQM Act.

DEQ has the responsibility to prepare TMDL plans for each listed "water quality limited" waters. DEQ calculates pollution load limits, known as Total Maximum Daily Loads (TMDLs), for each pollutant entering a body of water. TMDLs describe the amount of each pollutant a waterway can receive and still not violate water quality standards. TMDLs take into account the pollution from all sources, including discharges from industry and sewage treatment facilities; runoff from farms, forests and urban areas; and natural sources such as decaying organic matter or nutrients in soil. TMDLs include a safety margin for uncertainty and growth that allows for future discharges to a river or stream without exceeding water quality standards.

DEQ is committed to having federally approved TMDLs on all waterbodies listed

on the 1998-303(d) list by the end of the year 2007. Management plans to restore streams and rivers to water quality standards will be developed by government agencies in cooperation with landowners in the following ways:

- If the land adjacent to a waterbody is agricultural, then the Oregon Department of Agriculture will work with the landowners in the watershed to devise and implement a management plan (as stipulated by Senate Bill 1010).
- If the land is private or state forest, then the Oregon Department of Forestry implements the Forest Practices Act.
- Federal agencies (such the U.S. Forest Service or the Bureau of Land Management) would have responsibility to develop watershed management plans for federal lands.
- In urban and rural areas not covered by other state or federal agencies, cities and counties would develop management plans, working closely with local watershed councils.

DEQ then submits overall water quality management plans to the U.S. Environmental Protection Agency (EPA) along with the TMDL. EPA has the responsibility for approving the TMDL. Not all basins will have TMDLs developed at once. DEQ has prioritized the order for allocating resources to develop TMDLs through the year 2007.

In response to the 303(d) list and Senate Bill 1010 requirements, ODA, in consultation with other state agencies, determines priority watersheds for development of AgWQMPs. Through its locally based planners, ODA assembles a Local Advisory Committee consisting of stakeholders residing in the watershed. The committee is responsible for developing a draft action plan to address water quality issues arising from agricultural activities and soil erosion on rural lands. Under the AgWQMP, local operators will be asked to deal with identified problems such as soil erosion, crop nutrient loss from fields, or degraded streamside areas.

Planning areas designated by ODA have some flexibility in establishing prohibited and desired conditions that direct farmers toward compliance with standards set by the ODA. These prohibited and desired conditions are drafted in AgWQMPs, which are then codified in Oregon Administrative Rule.

ODA has delineated 39 AgWQMP area boundaries that essentially cover the entire state. Seven planning areas cover the 6217 management area boundary (See map, Attachment 7). The status of AgWQMPs, the 303(d) Listed Pollutants, and Rules for these seven areas is indicated in the following Table 1:

**Table 1: Status of AgWQMPs, 303 (d) Listed Pollutants and Rules**

<b>AgWQMP Area</b>	<b>303 (d) Listed Pollutants</b>	<b>Status</b>
Bear Creek	Aquatic Weeds/Algae, Bacteria, Chlorophyll a, Dissolved Oxygen, Habitat and Flow Modification, pH, Nutrients, Sedimentation, Temperature, Toxics (Pesticides and Ammonia)	Plan and rules adopted 6/98, in implementation phase.
North Coast	Aquatic Weeds/Algae, Bacteria (freshwater and estuary), Dissolved Oxygen, Habitat and Flow Modification, Sedimentation, Temperature	Plan and rules adopted 7/00, in implementation phase.
Umpqua	Aquatic Weeds/Algae, Bacteria, Biological Criteria, Chlorophyll a, Dissolved Oxygen, Habitat and Flow Modification, Nutrients, pH, Sedimentation, Temperature, Total Dissolved Gases	Plan and rules adopted 1/01, in implementation phase.
Inland Rogue	Bacteria, Biological Criteria, Chlorophyll a, Habitat and Flow Modification, pH, Sedimentation, Temperature	Plan and rules adopted 6/01, in implementation phase.
Coos & Coquille	Aquatic Weeds/Algae, Bacteria, Chlorophyll a, Dissolved Oxygen, Habitat Modification, pH, Temperature	Plan and rules adopted 3/02, in implementation phase.
Mid-Coast	Aquatic Weeds/Algae, Bacteria, Chlorophyll a, Dissolved Oxygen, Habitat Modification, Nutrients, Sedimentation, Temperature	Plan and rules adopted 9/02, in implementation phase.
South Coast	Aquatic Weeds/Algae, Bacteria, Biological Criteria, Chlorophyll a, Dissolved Oxygen, Habitat and Flow Modification, Nutrients, pH, Sedimentation, Temperature	Committees work in progress. Adoption anticipated by 2003.

Technical assistance from local SWCDs and others is provided for those who need it. The Federal Farm Bill, the Oregon Plan for Salmon and Watersheds, the Agricultural Water Quality Management Act and other state and federal entities offer several programs for Technical, Financial and Education assistance.

NRCS has compiled a list of Best Management Practices (BMPs) available for various agriculture operations. The list includes many solutions, which can be implemented to improve water quality. Growers can also contact their local SWCD for technical advice on activities on their farm that may require reevaluation.

## **Biennial Review of AgWQM Plans**

All plans and rules are reviewed on a biennial basis from when the plan and rules were adopted. Where TMDL and AgWQM plan development are on different schedules, biennial review offers a “window” for TMDLs to be fitted to AgWQM plans that may have been created prior to a TMDL in a particular AgWQMA. See attached Memorandum of Agreement (MOA) between DEQ and ODA regarding Water Quality Limited Waterbodies (303(d)), Total Maximum Daily Loads (TMDLs) and Agricultural Water Quality Management Area Plans (AgWQMAPs) (Attachment 8).

ODA and DEQ agree to update this MOA when necessary to clearly define roles and responsibilities regarding AgWQM Plans and TMDLs. Presently, the MOA identifies the process for development and review of AgWQM Plans, for submittal of AgWQM Plans as the TMDL Agricultural Implementation Plan, for involvement of DEQ in plan and rule development, and for plan implementation. As sister agencies, ODA and DEQ have ongoing communication in regard to this MOA to insure its adequacy to address potential issues.

## **Linkages from the Coastal Zone Act (6217g) to the AgWQMA plans**

Every AgWQM plan completed in the area affected by 6217(g) has the management measures as an appendix. In some planning processes, these measures were used as a guide to begin to determine what would be “prohibited conditions” in the AgWQMA.

Some Local Advisory Committees chose to incorporate some or all of the management measures verbatim into their respective AgWQMA plans.

## **C. AGRICULTURAL MANAGEMENT MEASURES**

### **EROSION AND SEDIMENT CONTROL**

Under the Agricultural Water Quality Management Program, farmers with soil erosion problems will have the responsibility for finding and implementing erosion prevention and sediment control methods that fit their farming operation. It might be planting cover crops on sloping lands. It might be conservation tillage - leaving crop residues as mulch to control erosion and runoff. It could be providing a buffer of streamside vegetation. The choices are up to the operator as long as the goals set out in the overall AgWQMP are met.

ODA will evaluate erosion problems identified through complaints and from staff observation. In some cases SWCDs will identify erosion problems and work with

landowners to address these situations. Basin-wide monitoring efforts - which are planned when resources are available - will also be used to identify areas with erosion problems. Areas where TMDL allocations have been set for sedimentation loads will be included in the Agricultural TMDL Implementation Plan and will have bearing in addressing erosion problems in a designated AgWQMA.

## **NUTRIENT MANAGEMENT**

For CAFO permits, animal waste management plans are required as a component of those issued to new operations or for operations filing for an expansion in animal numbers, or for operations making modifications to existing facilities for waste storage, handling, application, or disposal or as a result of an enforcement order. Comprehensive nutrient management plans include provisions for equipment calibration.

For those AgWQMAs that have nutrients listed a TMDL pollutant (which includes Bear Creek, Umpqua, Mid-Coast and South Coast), the AgWQMPs adopted reference the nutrient management measure, include it as a requirement for an approvable farm level water quality management plan, or include it as a recommended approach for landowners to deal with water quality parameters. AgWQMPs can address nutrients in several sections, including goals and objectives, outreach and education strategies and recommendations of optional management practices such as integrated pest management.

For 303(d) watersheds or stream segments that have nutrients listed as a TMDL pollutant, ODA contracts with Local Management Agencies (usually a local SWCD) to conduct monitoring on agricultural lands. This additional monitoring is initiated to augment efforts by DEQ, which is the primary state agency responsible for monitoring water quality in the state. The department's efforts are contingent on funding, largely through grant support, as ODA does not have the budget to support these efforts.

The AgWQMPs adopted in coastal areas (this includes the Bear Creek, Umpqua, Mid-Coast and South Coast areas) reference the nutrient management measure, include it as a requirement for an approvable farm level water quality management plan, or include it as a recommended approach for landowners to deal with water quality parameters. AgWQMPs can address nutrients in several sections, including goals and objectives, outreach and education strategies and recommendations of optional management practices such as integrated pest management. For nutrient and waste violations of OARs adopted in an AgWQMA, the department has the authority to require a nutrient management plan as part of a compliance order to correct the violation.

During plan implementation, ODA and SWCDs (those with the ability) can promote nutrient application at agronomic rates, work with landowners on development of individual farm water quality plans, and other similar practices through outreach



and technical assistance efforts. As coastal area plans undergo biennial reviews and nutrient problems are identified, management measures can be developed with Local Advisory Committees and considered for inclusion in plan revisions as recommended approaches.

In addition, in areas where TMDL allocations have been set for nutrient loads, the Agricultural Implementation Plan will address agricultural conditions that contribute to nutrient problems in a designated AgWQMA

## **PESTICIDE MANAGEMENT**

The Pesticide Division regulates all activities of pesticide use in Oregon, not just agricultural use. ODA's regulation of pesticides encompasses commercial as well as homeowner use.

**Mission** To protect people and the environment from any adverse effects of pesticide use while maintaining the availability of pesticides for beneficial uses; to assure that effective fertilizer items are provided for agricultural and consumer uses.

The ODA pesticide program is implemented under a cooperative agreement with the EPA through the Region 10 Pesticide Program Office (Marie Jennings). This agreement is quite in depth and lays out the responsibilities of the state and the EPA to achieve the goals of the EPA's pesticide responsibilities in Oregon. ODA's responsibilities under this agreement are described below. In addition the department has formalized working relationships with the following organizations to assure coordination on issues related to pesticide use.

- \* Oregon health division particularly as it relates to the drinking water program
- \* DEQ- air quality, water quality, land quality, hazardous waste programs
- \* Oregon OSHA - worker safety
- \* Oregon Department of Fish and Wildlife - fish and habitat divisions
- \* Oregon Department of Forestry. Forest protection division, forest management division
- \* Water Resources Department - chemigation, well head protection

## **Budget (2001-2003)**

### **Pesticides**

- \* General Fund \$100,000
- \* Federal Funds \$1,080,290
- \* Other Funds \$3,235,059
- \* Total \$4,415,349

## **Staffing (2001-2003)**

The division has a staff of 20 including: four managers, 13 technical positions, and a support staff of three. The division staffs two field offices; one in Hermiston and another in Central Point.

## **RESPONSIBILITIES**

The division seeks to protect people and the environment from adverse effects of pesticide use while maintaining the availability of pesticides for beneficial uses. The division regulates the sale and use of pesticides; provides testing and licensing of all users of restricted-use pesticides; is responsible for fertilizer registration; and investigates incidents of alleged pesticide misuse.

### **Pesticide User Licensing**

Certain persons who use pesticides in Oregon are required to be licensed by the Oregon Department of Agriculture prior to conducting pesticide applications. Certification of applicators is accomplished through the administration of pesticide category-specific examinations to demonstrate a quantifiable level of awareness of pesticide related issues. Once a person is certified, they may apply for an applicator license. Certification is limited to a 5-year period and may be renewed by accumulating a required number of recertification educational hours or by retaking the examinations. Other pesticide licenses issued include pesticide dealers, pesticide consultants and pesticide operators. Activities related to this division function include:

- \* Writing certification examinations
- \* Preparing examination study guides
- \* Proctoring examination sessions
- \* Grading examinations
- \* Evaluating educational sessions
- \* Recording training session attendance for individual licensees
- \* Processing license renewals
- \* Providing pesticide technical information to the public and licensees
- \* Developing, conducting, and/or participating in training sessions

### **Annual Licenses**

- \* Private Pesticide Applicator 5,517
- \* Commercial Pesticide Operator 801
- \* Commercial Pesticide Applicator/Trainee 4,097
- \* Public Pesticide Applicator/Trainee 1,734
- \* Pesticide Consultant 945
- \* Pesticide Dealer 248
- \* Recertification Sessions Accredited 950
- \* Certification Examinations Administered 4,456

## **Pesticide Registrations**

Pesticide products offered for sale or distribution in Oregon must be registered with ODA on an annual basis. EPA determines the uses and restrictions of each pesticide product. Those requirements are contained in the product labels, filed as part of the registration process. With the vast diversity of minor crops in Oregon, special conditions sometimes exist which require some pesticide products to be reviewed and registered as an Oregon Special Local Need, allowing use on crops otherwise not included on EPA approved labels.

Under circumstances which could potentially devastate a crop or industry in Oregon, the department requests special authorizations from EPA for specific pesticide uses. Also, experimental use permits are issued to facilitate data development. Data submitted and reviewed include product toxicity to humans and wildlife, economic impact, environmental fate, efficacy, phytotoxicity, worker protection, use and cropping patterns, etc.

### **Annual Statistics**

- \* Registrants 915
- \* Products Registered 9,576
- \* Special Local Need Registrations 57
- \* Emergency Authorizations 34

## **Pesticide Compliance Monitoring**

Take approximately 10,000 licensed pesticide applicators in Oregon and add anyone else who applies pesticides who is not required to be licensed and you have the audience of the pesticide compliance section of ODA's Pesticide Division. Oregon maintains a cooperative agreement with EPA in monitoring pesticide compliance with federal regulations in addition to the state regulations outlined in Oregon Revised Statutes Chapter 634 and Oregon Administrative Rules Chapter 603, Division 57. Salem remains the headquarters for most of the pesticide compliance monitoring staff; however, district offices are also located in Central Point and Hermiston to improve response time and address unique local issues. Pesticide investigative staff primarily serves as the "front line" representatives of the Pesticides Division to respond to complaints and assess potential violations. In addition, compliance personnel are an extremely valuable resource for disseminating technical information, and providing regulatory education and compliance assistance.

### **Annual Statistics**

- \* Complaints Received 295
- \* Investigations conducted 414
- \* Advisory Notices Issued 37

- \* Violation Notices Issued 116
- \* Civil Penalties Issued 14

Pesticide sales, use, and distribution in Oregon are regulated under ORS Chapter 634. If pesticide use restrictions beyond label requirements are necessary to protect water quality in coastal areas; ODA has the authority, under ORS Chapter 634, to implement necessary use restrictions to protect water quality. No new rules for pesticides will be developed through the Agricultural Water Quality Management Program. If additional use restrictions are needed, this will be accomplished through changes to the label through the Pesticides Division. Individuals that have specific concerns regarding existing pesticide laws and regulations or specific pesticide product label language should contact the Pesticides Division.

Agricultural water quality plans can address pesticides in several sections, including goals and objectives, outreach and education strategies and recommendations of optional management practices such as integrated pest management.

During plan implementation, ODA and SWCDs (those with the ability) can promote IPM and other similar practices through outreach and technical assistance efforts (Attachment 9). As coastal area plans undergo biennial reviews and pesticide problems are identified, management measures can be developed with Local Advisory Committees and considered for inclusion in plan revisions as recommended approaches.

Currently no state agency has broad authority for addressing pesticide storage. The State Fire Marshal has some regulations related to chemical storage, but they're more related to fire safety than water quality. OSHA addresses hazard communication in relation to pesticide products stored and worker exposure concerns.

EPA has released draft "proposed pesticide label language" addressing Drift Reduction with additional restrictions for many pesticide products, such as setbacks for applications near sensitive areas. Some existing labels currently have such restrictions, but EPA, through this proposed draft guidance, desires to have the restrictions apply to more pesticides. Once the proposed label language is finalized by EPA, ODA would enforce new label requirements in conformance with or more restrictive than the EPA guidance, but again, this would be done through the Pesticides Division and the requirements would likely be statewide to assure consistency.

For those AgWQMAs that have pesticides listed a TMDL pollutant (which only includes Bear Creek), the AgWQMPs adopted reference the pesticide management measure, include it as a requirement for an approvable farm level water quality management plan, or include it as a recommended approach for

landowners to deal with water quality parameters. The Bear Creek AgWQMP can address pesticides in several sections, including goals and objectives, outreach and education strategies, and recommendations of optional management practices such as integrated pest management. In addition, in areas where TMDL allocations have been set for pesticide loads, the Agricultural Implementation Plan will address agricultural conditions that contribute to pesticide problems and the pesticide program will address the application practices that contribute to pesticide problems.

## **GRAZING MANAGEMENT**

The objective of this measure is to ensure that impacts resulting from livestock grazing are minimized to protect water quality, streambanks, stream channels, and riparian and aquatic conditions. This measure will be included in the appendices of all coastal AgWQM plans and in Agricultural TMDL Implementation Plans in the coastal zone area.

- I. Riparian Areas: Implement one or more of the following as necessary to protect water quality, streambanks, stream channels, wetlands, estuaries, ponds, lakeshores, and riparian soils and vegetation:
  - (A) For privately owned lands, implement (1) or (2) below:
    - (1) Implement one or more of the following:
      - (a) Provide stream crossings or hardened watering access for drinking;
      - (b) Provide alternative drinking water locations away from the stream channel and sensitive areas;
      - (c) Locate salt and additional shade, if needed, away from sensitive areas;
      - (d) Use improved grazing management techniques including the application of scientifically sound grazing systems. The following are some examples of such techniques:
        - 1. Include riparian areas in separate pastures and manage them under separate objectives and strategies including periodic rest.
        - 2. Fence or, where appropriate, herd livestock out of riparian areas for as long as necessary to avoid negative impacts to streambanks.
        - 3. Control the timing of grazing in riparian areas to (1) protect streambanks when they are most vulnerable to damage; and (2) coincide with the physiological needs of essential plant species.
        - 4. Add rest, as needed, to the grazing cycle to increase plant vigor and encourage more desirable plant species composition.
        - 5. Limit grazing intensity, frequency, and duration to a level that will maintain desired plant species

- composition and vigor.
- 6. Manage livestock away from riparian areas that are at high risk or with poor recovery potential.
- (e) Exclude livestock from sensitive areas.
- (2) Implement a Conservation Management System (CMS) as defined in the Field Office Technical Guide of the USDA-Natural Resource Conservation Service (NRCS) by applying the progressive planning approach of the USDA-NRCS.
- (B) For publicly owned or managed lands, maintain rangelands, pasturelands, and other grazing lands in accordance with plans established by the responsible agency such as the USDI- Bureau of Land Management, the USDA-Forest Service.
- II. Uplands: To protect water quality from grazing impacts on upland areas that are not protected under (I),
- (A) For privately owned lands, implement (1) or (2) below:
  - (1) Implement one or more of the following:
    - (a) Locate livestock watering facilities away from sensitive areas such as springs and seeps;
    - (b) Locate salt and additional shade, if needed, away from sensitive areas;
    - (c) Use improved grazing management techniques including the application of scientifically sound grazing systems. The following are some examples of such techniques:
      - 1. Control the timing of grazing to (1) protect soils and vegetation when they are most vulnerable to damage; and (2) coincide with the physiological needs of essential plant species.
      - 2. Add rest to the grazing cycle to increase plant vigor, or encourage more desirable plant species composition.
      - 3. Limit grazing intensity, frequency, and duration to a level that will maintain desired plant species composition and vigor.
  - (2) Implement a Conservation Management System (CMS) as defined in the Field Office Technical Guide of the USDA-Natural Resource Conservation Service (NRCS) by applying the progressive planning approach of the USDA-NRCS.
- (B) For publicly owned or managed lands, maintain rangelands, pasturelands, and other grazing lands in accordance with plans established by the responsible agency such as the USDI- Bureau of Land Management, the USDA-Forest Service.

## IRRIGATION MANAGEMENT

In areas with irrigation water management issues ODA and DEQ will increase coordination with the Water Resources Department (WRD). In Oregon, nearly all uses of surface water require a water right. The standard conditions specify a use, source, a point of diversion, and place of use. Additionally, standard language includes a maximum rate at which water may be diverted which is further limited to beneficial use without waste. WRD field staff will supply water rights data for any AgWQMP project upon request. Interactive water rights information is available on-line as well.

New applications for water use are processed under the classifications of basin programs. These basin programs are set in administrative rule (Attachment 10). The following Table 2 is a listing of the applicable basin programs:

**Table 2: Oregon Water Resources Department**

**Water Use Basin Programs**

<b>Basin</b>	<b>Oregon Administrative Rule</b>
North Coast	OAR Chapter 690 Division 501
Rogue Basin	OAR Chapter 690 Division 515
Umpqua Basin	OAR Chapter 690 Division 516
South Coast	OAR Chapter 690 Division 517
Mid Coast	OAR Chapter 690 Division 518

Irrigation districts may choose to develop voluntary Water Management and Conservation Plans. The plan requirements are set in administrative rule, OAR 690 086. Plans are composed of four elements: (1) a description of the water system; (2) water conservation; (3) water curtailment; and (4) long-range water supply planning. Three irrigation districts in the Rogue Valley have had plans approved.

The state also controls pesticide applications in irrigation systems. The Oregon Environmental Quality Commission adopted a Mutual Agreement and Order (MAO) for the 2001 irrigation season in response to *Headwaters, Inc. v. Talent Irrigation District*, 2000 WL 33224806 (9<sup>th</sup> Cir Mar. 12, 2001) which held that irrigation ditches are “waters of the United States” under the Clean Water Act. The Ninth Circuit also held that aquatic herbicides, such as acrolein, are “pollutants” at the time of application to the irrigation ditches.

The Department of Environmental Quality (DEQ) is proposing a similar MAO for the 2002 irrigation season (Attachment 11). However, the exact coverage under the Federal Clean Water Act remains uncertain since an EPA policy memo, dated March 29, 2002 states that an NPDES permit is not required. This memo is being reviewed by DEQ to determine whether to control these discharges with permits,

enforcement, or a combination of the two.

The MAO controls pesticide applications by an irrigation district organized under ORS 545, water control district organized under ORS 553, drainage district organized under ORS 547, diking district organized under ORS 551, water improvement district organized ORS 552, and reclamation project subject to ORS 555 and to any other owner or operator of an irrigation system that demonstrates to DEQ's satisfaction that it has the financial and technical capability to comply with the MAO. The MAO requires conditions that will protect water quality by stipulating that state aquatic toxicity standards (Table 20) will be met outside of the irrigation system.

### **Enforceable Mechanisms**

The CNPCP program requires states to have enforceable policies to assure implementation of the management measures. ODA has demonstrated its broad authorities, embodied in several programs, to regulate agricultural activities for water quality purposes. These authorities are provided to the department in various programs as indicated in the following Table 3:

**Table 3: Statutes and Rules Governing Various Water Quality Related Programs at ODA**

<b>Program Area</b>	<b>Governing Statutes</b>	<b>Oregon Administrative Rules</b>
CAFO	ORS 468B.200 through 468B.230 2001 House Bill 2156	OARs Chapter 340 Division 51 OARs Chapter 603 Division 74
Agricultural Water Quality	ORS 568.900 to 568.933 ORS 561.191	OARs 603-090-0000 through 603-090-0120
Pesticide Use	ORS Chapter 634	OARs Chapter 603 Division 57
Irrigation Water Management	ORS Chapter 536	OARs Chapter 690 Division 500

The Oregon Department of Agriculture (ODA) has the responsibility for enforcing CAFO statutes and rules, AgWQMP rules, and pesticide laws. Enforcement tools include water quality advisories, Notices of Noncompliance, Plans of Correction, and civil penalties. Civil penalties are typically reserved as the tool of last resort, after efforts to gain compliance through other tools have been exhausted.

### **Overview of Voluntary Programs Addressing Agricultural Water Quality Issues in Oregon's Coastal Areas.**

Many efforts are underway in Oregon to prevent and control nonpoint pollution from agriculture in coastal agricultural areas: A majority of these programs can be



used to address one specific management measure, or all, if the landowner desires.

- **The Oregon Watershed Enhancement Board** has made implementation of projects that complement and support AgWQMPs one of their highest funding priorities. Significant portions of these grants are for projects that incorporate erosion and sediment management measures. Grants have been written by Local Management Agencies assisting ODA with implementation of AgWQMPs for livestock confinement areas during adverse conditions, for streambank repair, to provide fencing to exclude livestock from sensitive riparian areas and to reduce streambank erosion.
- **A "PL 566" program project** has been proposed in the North Coast Basin, with the Natural Resources Conservation Service (NRCS) as lead agency. This is an important program for ODA to use in implementation of the AgWQMP for the North Coast area. The "PL 566" program requires a whole watershed approach that uses various practices across land uses to improve conditions of the watershed. There are other NRCS programs being implemented in the AgWQMP coastal areas.
- There are two **National Estuary Programs**, the Lower Columbia NEP and the Tillamook NEP. Both of these areas have in place Comprehensive Conservation Management Plans in various stages of implementation.
- Through the **Oregon Plan**, state agencies (principally Water Resources Department and Fish and Wildlife) cooperatively set priorities for streamflow restoration.
- Oregon has both a short term and long-term **Instream Water Rights Program** to convert out of stream consumptive uses for instream benefit. Additionally, since the Instream Water Rights Act was passed in 1987, the Water Resources Department has converted the minimum perennial stream flows set in the Basin Programs to instream water rights and certified instream water rights applications by the Department of Fish and Wildlife.
- **The Conservation Reserve Enhancement Program (CREP)** continues to be a focal point for voluntary based landowner implementation programs in the AgWQMA. Qualified participants can be paid a higher rate for irrigated acres tied to an instream lease. This is particularly beneficial for those landowners that have been irrigating riparian areas and are now taking this land out-of-production for buffer creation and are paid an incentive to do so. The water right can be leased to the state or to any entity interested in preserving the water right for water quality benefits.
- **Confined Animal Feeding Operations** that use ground water for their barn wash may qualify for an industrial water re-use registration. An additional benefit of this program is to allow the farm operator to not use their surface water diversion but not be subject to forfeiture of that water right through non-use.
- **The Clean Water State Revolving Fund (CWSRF) Loan Program** provides low-cost loans for the planning, design and construction of water pollution

control facilities including nonpoint source control, storm water control and estuary management. Specifically, this could include CAFOs that are included within an Estuary Management Plan, such as the Tillamook and Lower Columbia River National Estuary Programs, agricultural management practices that reduce pollutant loads in surface waters such as stream buffers and wetland restoration, conservation easements and land acquisitions. Any public agency in Oregon is eligible for a CWSRF loan for a publicly owned project. The program is administered by DEQ who is in the process of revising rules governing the program. Specifically, the priority list process is being revised to place nonpoint source projects on an equal priority to the traditionally funded point source projects.

- **Nonpoint Source Pollution 319 Grant** funds available through Section 319 of the Water Quality Act of 1987 are a critical element in turning Oregon's NPS control program into water quality protection realities in watersheds throughout the state. Each year, DEQ identifies programmatic and geographic targets, solicits project proposals, assembles a proposal package for EPA's review, develops contracts and agreements for disbursement of grant funds, oversees program implementation, and evaluates program accomplishments. Many agricultural related nonpoint source projects and programs have been funded through the 319 program. This includes funding staff positions at ODA, watershed councils, NRCS and other groups in order to develop and implement AgWQM plans, best management practices, restoration projects, monitoring activities and the CAFO program, many of which include the CNPCP agriculture management measures. Grant awards to Oregon through this program have been:

**Distribution of 319 Funds in Oregon, Years 1991-1999**

Emphasis of projects	1991	1992	1993	1994	1995	1996	1997	1998	Total
Characterization of NPS problem / concern	\$40,000		\$87,083	\$91,000		\$74,380	\$25,000	\$90,000	\$407,463
Monitoring	190,000	239,200	213,970	210,000	85,000	108,000	55,800	125,540	\$1,227,510
Watershed study			20,000	70,000	193,000	86,700	68,000	137,030	\$574,730
BMP development / implementation	76,450	206,990	46,000	262,000	145,000	195,590	50,000	35,000	\$1,017,030
Coordination	148,000	179,000	217,000	237,000	407,000	357,600	597,160	393,000	\$2,535,760
Restoration	197,046	160,000	160,000	449,580	626,070	41,908	374,045	302,420	\$2,311,069
Public Education	85,500		30,000	109,000	181,000	245,554	180,000	267,000	\$1,012,554
Total Funds	\$506,996	\$545,990	\$776,046	\$1,430,574	\$1,637,070	\$1,111,728	\$1,352,002	\$1,351,988	\$8,712,394

- The state has a **nonpoint source tax credit** at 50 percent of the cost for private expenses. This includes many of the agriculture nonpoint protection

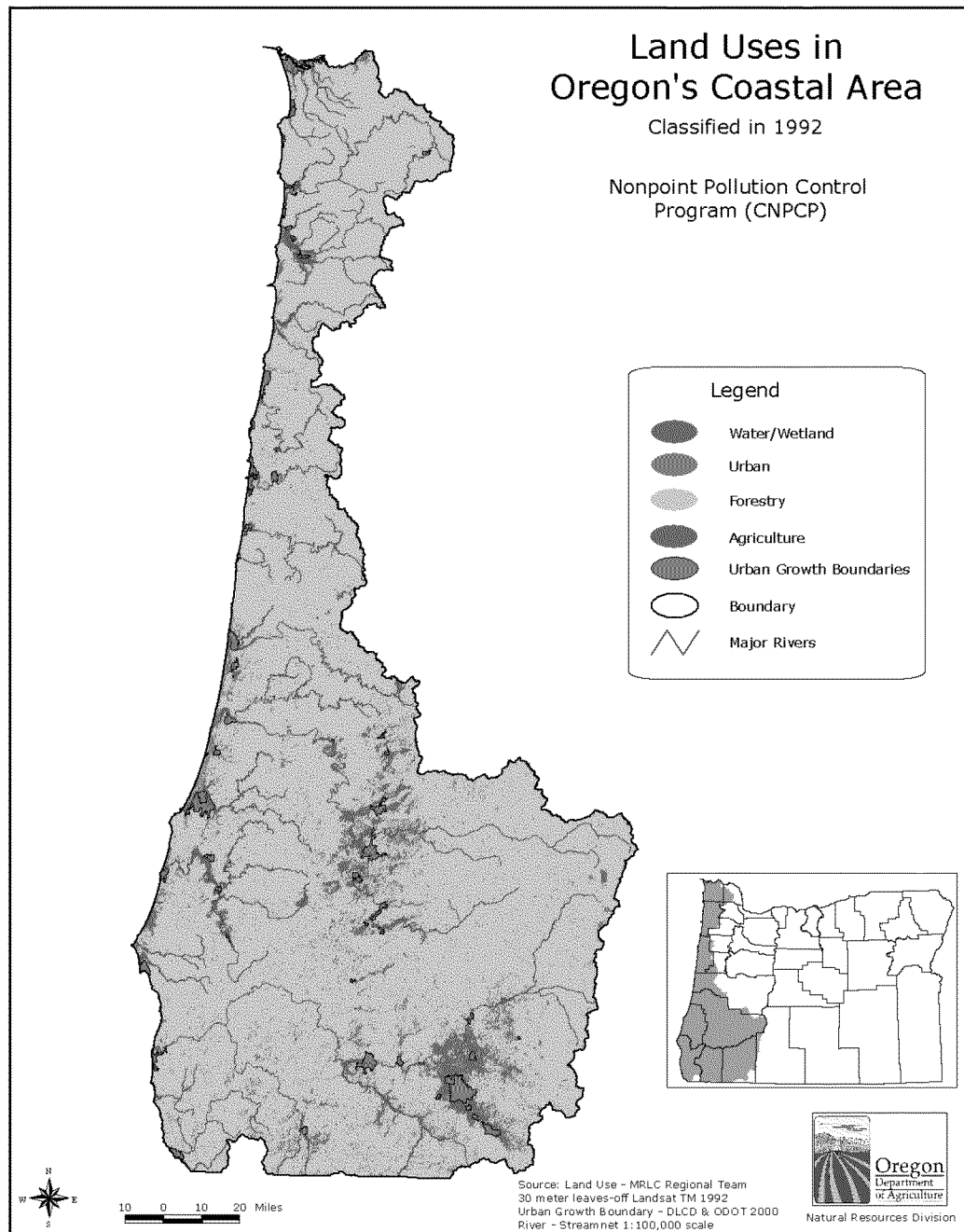
activities. However, this program has not been developed and implemented, with no tax credits given as of yet. DEQ plans to develop the program in the future.

#### **D. SUMMARY AND CONCLUSION**

Oregon's effort to improve water quality in coastal areas involves a combination of a number of voluntary and regulatory programs. It is anticipated that water quality improvements in coastal areas contemplated by the Coastal Nonpoint Pollution Control Program will be achieved over the implementation timeframe.

With the information presented in this report and that contained in the state's original submittal the State of Oregon has demonstrated full compliance with the Management Measure for Agricultural Sources.

# Attachment 1



# Attachment 2

71st OREGON LEGISLATIVE ASSEMBLY--2001 Regular Session

**Enrolled**

## **House Bill 2156**

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Presession filed (at the request of Governor John A. Kitzhaber, M.D., for State Department of Agriculture)

CHAPTER .....

AN ACT

*Relating to confined animal feeding operations; creating new provisions; amending ORS 468B.035, 468B.050, 468B.205, 468B.215, 468B.225, 468B.230, 537.141, 537.545 and 561.175; repealing ORS 468B.223 and 468B.227; and declaring an emergency.*

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. (1) The State Department of Agriculture and the Department of Environmental Quality are directed to pursue United States Environmental Protection Agency approval of the transfer of the permitting program implemented pursuant to 33 U.S.C. 1342, as it relates to confined animal feeding operations, from the Department of Environmental Quality to the State Department of Agriculture.**

**(2) The State Department of Agriculture is directed to assume all permitting and enforcement responsibilities for confined animal feeding operations at such time as the United States Environmental Protection Agency approves the transfer.**

**(3) In order to encourage the assumption of all permitting and enforcement responsibilities for confined animal feeding operations by the State Department of Agriculture, the Department of Environmental Quality and the State Department of Agriculture shall notify the United States Environmental Protection Agency of the completion of the interagency agreements and administrative procedures necessary for the transfer of the permitting program to the State Department of Agriculture.**

**(4) If the State Department of Agriculture assumes all permitting and enforcement responsibilities for confined animal feeding operations, the State Department of Agriculture shall, to the extent that funds are available for the creation and implementation of an educational program, inform and familiarize operators of confined animal feeding operations with any new administrative rules or related regulatory programs implemented as a result of the assumption.**

**SECTION 2. The State Department of Agriculture shall inform the President of the Senate, the Speaker of the House of Representatives and the Legislative Counsel Committee of the assumption of permitting and enforcement responsibilities for confined animal feeding operations pursuant to section 1 of this 2001 Act at the time the United States Environmental Protection Agency approves the transfer.**

**SECTION 3. ORS 468B.035 is amended to read:**

**468B.035. (1) The Environmental Quality Commission may perform or cause to be performed any [and all] acts necessary to be performed by the state to implement within the jurisdiction of the**

state the provisions of the Federal Water Pollution Control Act, [enacted by Congress, October 18, 1972, and Acts amendatory thereof or supplementary thereto,] **P.L. 92-500, as amended**, and federal regulations [and] **or guidelines issued pursuant [thereto] to the Act**. The commission may adopt, modify or repeal rules, pursuant to ORS 183.310 to 183.550, for the administration and implementation [of this section] **of this subsection**.

**(2) The State Department of Agriculture may perform or cause to be performed any acts necessary to be performed by the state to implement the provisions of the Federal Water Pollution Control Act, P.L. 92-500, as amended, and any federal regulations or guidelines issued pursuant to the Act, relating to the control and prevention of water pollution from livestock and other animal-based agricultural operations. The department may adopt rules pursuant to ORS 183.310 to 183.550 for the administration and implementation of this subsection.**

**SECTION 4.** ORS 468B.050 is amended to read:

468B.050. (1) Except as provided in ORS 468B.053 or 468B.215, without first obtaining a permit from the Director of the Department of Environmental Quality **or the State Department of Agriculture**, which permit shall specify applicable effluent limitations, no person shall:

(a) Discharge any wastes into the waters of the state from any industrial or commercial establishment or activity or any disposal system.

(b) Construct, install, modify or operate any disposal system or part thereof or any extension or addition thereto.

(c) Increase in volume or strength any wastes in excess of the permissive discharges specified under an existing permit.

(d) Construct, install, operate or conduct any industrial, commercial, confined animal feeding operation or other establishment or activity or any extension or modification thereof or addition thereto, the operation or conduct of which would cause an increase in the discharge of wastes into the waters of the state or which would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized.

(e) Construct or use any new outlet for the discharge of any wastes into the waters of the state.

**(2) As used in this section, "confined animal feeding operation" has the meaning given [in ORS 468B.205] that term in rules adopted by the State Department of Agriculture or the Department of Environmental Quality.**

**SECTION 5.** Section 6 of this 2001 Act is added to and made a part of ORS 468B.200 to 468B.230.

**SECTION 6.** The provisions of ORS 468B.200 to 468B.230 apply to animal feeding operations regulated under 33 U.S.C. 1342 only to the extent that the operation of the provisions of ORS 468B.200 to 468B.230 are consistent with federal law, regulations or guidelines issued pursuant to the Federal Water Pollution Control Act, P.L. 92-500, as amended.

**SECTION 7.** ORS 468B.205 is amended to read:

468B.205. (1) As used in ORS 468B.200 to 468B.230, "confined animal feeding operation" [means the concentrated confined feeding or holding of animals or poultry, including, but not limited to horse, cattle, sheep or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms, in buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather

or which have waste water treatment works] **has the meaning given that term in rules adopted by the State Department of Agriculture or the Department of Environmental Quality. The definition must distinguish between various categories of animal feeding operations, including but not limited to those animal feeding operations that are subject to regulation under 33 U.S.C. 1342.**

**(2) A rule implementing ORS 468B.200 to 468B.230 may not be adopted using the procedures provided in ORS 183.337 for agency adoption of federal rules.**

**SECTION 8.** ORS 468B.215 is amended to read:

468B.215. (1) Any person operating a confined animal feeding operation shall pay a fee established under ORS 561.175.

(2) **Except for an animal feeding operation subject to regulation under 33 U.S.C. 1342**, a fee shall not be assessed to nor a permit required **under ORS 468B.050 (1)(d)** of confined animal feeding operations of four months or less duration or that do not have waste water control facilities. A confined animal feeding operation [in this category shall be] **of four months or less duration or that does not have waste water control facilities is** subject to all requirements of ORS chapters 468, 468A and 468B if found to be discharging wastes into the waters of the state [without a permit or in violation of a permit].

[(3)] In order to recover costs associated with increased monitoring and inspection, for the three years after a confined animal feeding operation owner or operator is assessed a civil penalty for violation of any provisions of ORS chapters 468, 468A and 468B, any rule adopted under ORS chapter 468, 468A and 468B or any permit condition, the owner or operator shall pay an annual inspection fee of \$1,000 rather than the fee established under ORS 561.175 and shall have an annual inspection for each of the three years. An owner or operator shall be considered to have been assessed a civil penalty only if the penalty has been adjudicated pursuant to ORS 468.135.]

[(4)] **(3)** The Department of Environmental Quality **or the State Department of Agriculture** may impose on the permit required for a confined animal feeding operation only those conditions necessary to [assure] **ensure** that wastes are disposed of in a manner that does not cause pollution of the surface and ground waters of the state.

[(5)] **(4)** A permit for a confined animal feeding operation [shall not expire, but] may be revoked or modified by the [Director of the] Department of Environmental Quality **or the State Department of Agriculture** or may be terminated upon request by the permit holder. [Each confined animal feeding operation under permit may be inspected by the State Department of Agriculture.] **An animal feeding operation may be inspected for compliance with water quality laws and regulations by the Department of Environmental Quality or the State Department of Agriculture.**

**SECTION 9.** ORS 468B.225 is amended to read:

468B.225. (1) Prior to conducting an investigation of [a confined] **an** animal feeding operation under ORS 468B.217 on the basis of a complaint, the State Department of Agriculture shall:

(a) **(A)** Require the person making the complaint to specify the complaint in writing; **or**

**(B) Make a detailed written record of the complaint;** and

(b) Determine which provision of ORS chapter 468 or 468B, which rule adopted under ORS chapter 468 or 468B or which permit issued under ORS chapter 468 or 468B the operator of the [confined] animal feeding operation may have violated.

(2) If, upon investigation under ORS 468B.217 on the basis of a complaint received under subsection (1) of this section, the State Department of Agriculture determines that [a confined] **an** animal feeding operation has not violated a provision of ORS chapter 468 or 468B, a rule adopted under ORS chapter 468 or 468B or the conditions of a permit issued under ORS chapter 468 or 468B, **and the department has reason to believe that the complaint was groundless and made for the purpose of harassing the operator, the department may refuse to consider future complaints made by the person** [the State Department of Agriculture shall require that any additional complaint filed by the same person in the same calendar year shall be accompanied by a security deposit of \$100. If, after investigation, the State Department of Agriculture determines that a violation has occurred, the security deposit shall be returned to the person who filed the complaint. If the State Department of Agriculture determines that a violation has not occurred, the security deposit shall be forfeited].

**SECTION 10.** ORS 468B.230 is amended to read:

468B.230. (1) In addition to any liability or penalty provided by law, the State Department of Agriculture may impose a civil penalty on the owner or operator of a confined animal feeding operation for failure to comply with a provision of ORS chapter 468 or 468B or any rule adopted under, or a permit issued under ORS chapter 468 or 468B, relating to the control and prevention of water pollution from a confined animal feeding operation. For the purposes of this section, each day a violation continues after the period of time established for compliance shall be considered a separate violation unless the State Department of Agriculture finds that a different period of time is more appropriate to describe a specific violation event.

(2) **Except for an animal feeding operation subject to regulation under 33 U.S.C. 1342**, the State Department of Agriculture may not impose a civil penalty under subsection (1) of this section for a first violation by an owner or operator of a confined animal feeding operation:

(a) That is more than \$2,500; and

(b) Unless the State Department of Agriculture notifies the violator that the violation must be eliminated no later than 30 business days from the date the violator receives the notice. If the violation requires more than 30 days to correct, the State Department of Agriculture may allow such time as is necessary to correct the violation. In all cases, the legal owner of the property shall also be notified, prior to the assessment of any civil penalty.

(3) The State Department of Agriculture may not impose a civil penalty under subsection (1) of this section that exceeds \$10,000 for a subsequent violation.

(4) In imposing a civil penalty under this section, the State Department of Agriculture may consider:

(a) The past history of the owner or operator in taking all feasible steps or procedures necessary and appropriate to correct a violation.

(b) A past violation of a rule or statute relating to a water quality plan.

(c) The gravity and magnitude of the violation.

(d) Whether the violation was a sole event, repeated or continuous.

(e) Whether the cause of the violation was as a result of an unavoidable accident, negligence or an intentional act.

(f) Whether the owner or operator cooperated in an effort to correct the violation.

(g) The extent to which the violation threatens the public health and safety.

(5) No notice of violation or period for compliance shall be required under subsection (2) of this section if:

(a) The violation is intentional; or

(b) The owner or operator has received a previous notice of the same or similar violation.

(6) A civil penalty collected by the State Department of Agriculture under this section shall be deposited into a special subaccount in the Department of Agriculture Service Fund. Moneys in the subaccount are continuously appropriated to the department to be used for educational programs on animal waste management and to carry out animal waste management demonstration or research projects.

(7) Any civil penalty imposed under this section shall be reduced by the amount of any civil penalty imposed by the Environmental Quality Commission, the Department of Environmental Quality or the United States Environmental Protection Agency, if the latter penalties are imposed on the same person and are based on the same violation.

**SECTION 11.** ORS 537.141 is amended to read:

537.141. (1) The following water uses do not require an application under ORS 537.130 or 537.615, a water right permit under ORS 537.211 or a water right certificate under ORS 537.250:

(a) Emergency fire-fighting uses;

(b) Nonemergency fire-fighting training conducted by public fire departments and rural fire protection districts, provided:

(A) The source of the water is existing storage and the use occurs with permission of the owner of the stored water; or

(B) If the source of water is other than existing storage, the use occurs with the prior written approval of the watermaster in the district where the training will take place and subject to any conditions the watermaster determines are necessary to prevent injury to existing water rights and to protect in-stream resources;

(c) Water uses that divert water to water tanks or troughs from a reservoir for a use allowed under an existing water right permit or certificate for the reservoir;

(d) Fish screens, fishways and fish by-pass structures, as exempted by rule of the Water Resources Commission;

(e) Land management practices intended to save soil and improve water quality by temporarily impeding or changing the natural flow of diffuse surface water across agricultural lands when storage of public waters is not an intended purpose. Such practices include but are not limited to:

(A) Terraces;

(B) Dikes;



- (C) Retention dams and other temporary impoundments; and
- (D) Agronomic practices designed to improve water quality and control surface runoff to prevent erosion, such as ripping, pitting, rough tillage and cross slope farming;
- (f) Livestock watering operations that comply with the requirements under subsections (2) and (3) of this section;
- (g) Forest management activities that require the use of water in conjunction with mixing pesticides as defined in ORS 634.006, or in slash burning;
- (h) The collection of precipitation water from an artificial impervious surface and the use of such water; and
- (i) Land application of ground water so long as the ground water:
  - (A) Has first been appropriated and used under a permit or certificate issued under ORS 537.625 or 537.630 for a water right issued for industrial purposes or a water right authorizing use of water for confined animal feeding purposes;
  - (B) Is reused for irrigation purposes and the period of irrigation is a period during which the reused water has never been discharged to the waters of the state; and
  - (C) Is applied pursuant to a permit issued by the Department of Environmental Quality or the State Department of Agriculture under either ORS 468B.050 to construct and operate a disposal system or ORS 468B.215 to operate a confined animal feeding operation.
- (2) The use of surface water for livestock watering may be exempted under subsection (1) of this section if:
  - (a) The water is diverted from a stream or other surface water source to a trough or tank through an enclosed water delivery system;
  - (b) The delivery system either is equipped with an automatic shutoff or flow control mechanism or includes a means for returning water to the surface water source through an enclosed delivery system; and
  - (c) The operation is located on land from which the livestock would otherwise have legal access to both the use and source of the surface water source.
- (3) If the diversion system described in subsection (2) of this section is located within or above a scenic waterway, the amount of water that may be used without a water right is limited to one-tenth of one cubic foot per second per 1,000 head of livestock. Nothing in this section shall prevent the Water Resources Commission from approving an application for a water right permit for a delivery system not qualifying under subsection (2) of this section.
- (4) The Water Resources Department, in conjunction with local soil and water conservation districts, **the Oregon State University Extension Service**, the State Department of Agriculture and the State Department of Fish and Wildlife and any other organization interested in participating, shall develop and implement a voluntary educational program on livestock management techniques designed to keep livestock away from streams and riparian areas.
- (5) To qualify for an exempt use under subsection (1)(g) of this section, the user shall:
  - (a) Submit notice of the proposed use, including the identification of the proposed water source, to the Water Resources Department and to the State Department of Fish and Wildlife at the time notice is provided to other affected agencies pursuant to ORS 527.670; and
  - (b) Comply with any restrictions imposed by the department pertaining to sources of water that may not be used in conjunction with the proposed activity.
- (6) Except for the use of water under subsection (1)(i) of this section, the Water Resources Commission by rule may require any person or public agency diverting water as described in subsection (1) of this section to furnish information with regard to such water and the use thereof. For a use of water described in subsection (1)(i) of this section, the Department of Environmental Quality or the State Department of Agriculture shall provide to the Water Resources Department a copy of the permit issued under ORS 468B.050 or 468B.215 authorizing the land application of ground water for reuse. The permit shall provide the information regarding the place of use of such water and the nature of the beneficial reuse.

**SECTION 12.** ORS 537.545 is amended to read:

537.545. (1) Except as provided in subsection (4) of this section, no registration, certificate of registration, application for a permit, permit, certificate of completion or ground water right certificate under ORS 537.505 to 537.795 and 537.992 is required for the use of ground water for:

- (a) Stockwatering purposes;
  - (b) Watering any lawn or noncommercial garden not exceeding one-half acre in area;
  - (c) Watering the lawns, grounds and fields not exceeding 10 acres in area of schools located within a critical ground water area established pursuant to ORS 537.730 to 537.740;
  - (d) Single or group domestic purposes in an amount not exceeding 15,000 gallons a day;
  - (e) Down-hole heat exchange purposes;
  - (f) Any single industrial or commercial purpose in an amount not exceeding 5,000 gallons a day; or
  - (g) Land application, so long as the ground water:
    - (A) Has first been appropriated and used under a permit or certificate issued under ORS 537.625 or 537.630 for a water right issued for industrial purposes or a water right authorizing use of water for confined animal feeding purposes;
    - (B) Is reused for irrigation purposes and the period of irrigation is a period during which the reused water has never been discharged to the waters of the state; and
    - (C) Is applied pursuant to a permit issued by the Department of Environmental Quality or the State Department of Agriculture under either ORS 468B.050 to construct and operate a disposal system or ORS 468B.215 to operate a confined animal feeding operation.
- (2) The use of ground water for a use exempt under subsection (1) of this section, to the extent that it is beneficial, constitutes a right to appropriate ground water equal to that established by a ground water right certificate issued under ORS 537.700. Except for the use of water under subsection (1)(g) of this section, the Water Resources Commission by rule may require any person or public agency using ground water for any such purpose to furnish information with regard to such ground water and the use thereof. For a use of water described in subsection (1)(g) of this section, the Department of Environmental Quality or the State Department of Agriculture shall provide to the Water Resources Department a copy of the permit issued under ORS 468B.050 or 468B.215 authorizing the land application of ground water for reuse. The permit shall provide the information regarding the place of use of such water and the nature of the beneficial reuse.
- (3) If it is necessary for the Water Resources Department to regulate the use or distribution of ground water, including uses exempt under subsection (1) of this section, the department shall use as a priority date for the exempt uses the date indicated in the log for the well filed with the department under ORS 537.765 or other documentation provided by the well owner showing when water use began.
- (4) After declaration of a ground water management area, any person intending to make a new use of ground water that is exempt under subsection (1) of this section shall apply for a ground water permit under ORS 537.505 to 537.795 and 537.992 to use the water. Any person applying for a permit for an otherwise exempt use shall not be required to pay a fee for the permit.

**SECTION 13.** ORS 561.175 is amended to read:

561.175. (1) The State Department of Agriculture by rule shall establish a schedule of annual fees, not to exceed \$25, to be paid under ORS 468B.215 by any persons operating a confined animal feeding operation.

(2) As used in this section, "confined animal feeding operation" has the meaning given [in ORS 468B.205] that term in rules adopted by the State Department of Agriculture.

**SECTION 14.** ORS 468B.223 and 468B.227 are repealed.

**SECTION 15.** This 2001 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2001 Act takes effect July 1, 2001.

**Passed by House April 3, 2001**

**Repassed by House May 9, 2001**

.....  
Chief Clerk of House

.....  
Speaker of House

**Passed by Senate May 7, 2001**

.....  
President of Senate

**Received by Governor:**

.....M.,....., 2001

**Approved:**

.....M.,....., 2001

.....

Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2001

.....

Secretary of State

# **Attachment 3**

**STATE OF OREGON**  
***Department of Environmental Quality***

**GENERAL PERMIT**  
**WATER POLLUTION CONTROL FACILITIES PERMIT**

***Number 0800, CAFOs***

# Attachment 4

*The Oregon Administrative Rules contain OARs filed through February 15, 2002*

## **DEPARTMENT OF AGRICULTURE**

### **DIVISION 74**

### **CONFINED ANIMAL FEEDING OPERATION PROGRAM**

#### **603-074-0005**

##### **Purpose**

*These rules guide the Oregon State Department of Agriculture, Natural Resources Division in administering its Confined Animal Feeding Operation Program. In interpreting and applying these rules the Department may consider variations in soils and climate, and the potential for a particular confined animal feeding operation to cause a discharge of animal wastes into the waters of the state.*

*Stat. Auth.: ORS 468*

*Stats. Implemented: ORS 561.175*

*Hist.: AD 12-1990, f. & cert. ef. 6-4-90*

#### **603-074-0010**

##### **Definitions**

- (1) "Annual fee" means that fee required each year of each animal feeding operation with a water pollution control facilities waste disposal permit including, but not limited to, that fee required under ORS 561.175.*
- (2) "Compliance" means meeting the requirements of ORS Chapter 468 or 468B or any rule, order, or permit adopted thereunder and relating to the control and prevention of water pollution from an animal feeding operation, a concentrated animal feeding operation, or a confined animal feeding operation.*
- (3) "Confined animal feeding operation" means*
  - (a) The concentrated confined feeding or holding of animals or poultry, including but not limited to horse, cattle, sheep, or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms;*
  - (A) In buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather; or*
  - (B) That have wastewater treatment works; or*
  - (C) That discharge any wastes into waters of the state; or*
  - (b) An animal feeding operation that is subject to regulation as a concentrated animal feeding operation pursuant to 40 CFR § 122.23.*
- (4) "Department" means the State Department of Agriculture.*
- (5) "Director" means the director of the State Department of Agriculture.*
- (6) "Flagrant violation" means any violation where the respondent had actual knowledge of the law and knowingly committed the violation.*
- (7) "Formal enforcement action" means any order of the director or the director's designee which is issued to a respondent in connection with a violation and requires the respondent to cease the violation, refrain from further violations, pay a civil penalty, or take other actions with respect to the violation. Formal enforcement actions include, but are not limited to, notices of noncompliance, civil penalty assessment, compliance schedules and*

*stipulated or consent orders.*

*(8) "Intentional" means conduct by a person with a conscious objective to cause the result of the conduct.*

- (9) "Negligence" or "negligent" means failure to take reasonable care to avoid a foreseeable risk of committing a violation.
- (10) "Order" has the meaning given in ORS 183.310(5).
- (11) "Person" means the United States and agencies thereof, any state, any individual, public or private corporation, political subdivision, governmental agency, municipality, copartnership, association, firm, trust, estate or any other legal entity whatever.
- (12) "Past occurrence of violations," as used in OAR 603-074-0080(4), means any violation for which a notice of noncompliance or assessment of civil penalty was issued within the preceding ten years. It does not include a violation if the notice is the subject of a pending appeal or if the notice has been withdrawn or successfully appealed.
- (13) "Pollution" or "water pollution" has the meaning given in ORS 468B.005(3).
- (14) "Previous notice of the same or similar violation," as used in OAR 603-074-0070(2), means a notice of noncompliance or assessment of civil penalties for the same or a similar type of violation that was issued within the preceding five years. It includes a notice for the same or a similar type of violation which is the subject of a pending appeal. It does not include a notice that has been withdrawn or successfully appealed.
- (15) "Reckless" means conduct by a person who is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstances exist. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of care a reasonable person would observe in that situation.
- (16) "Repeat violation" as used in OAR 603-074-0080(3), means the recurrence of the same type of violation as a violation for which a notice of noncompliance or assessment of civil penalty was issued within the preceding ten years. It does not include a violation if the previous notice is the subject of a pending appeal or if the notice has been withdrawn or successfully appealed.
- (17) "Respondent" means a person to whom a formal enforcement action is directed.
- (18) "Rule" has the meaning given in ORS 183.310(8).
- (19) "Violation" means the failure to comply with any requirement of ORS Chapter 468 or 468B, or any rule, order or permit adopted thereunder and relating to the control and prevention of pollution of the waters of the state from a confined animal feeding operation. Each day a violation continues after the time established for compliance shall be considered a separate violation unless the department finds that a different period of time is more appropriate to describe a specific violation event.
- (20) "Wastewater disposal system" or "wastewater treatment works" means all or any part of a system used in connection with a confined animal feeding operation for the:
- (a) Collection, retention, treatment, and disposal of liquid wastes or contaminated water; or
  - (b) Collection, handling, storage, treatment or processing and disposing of liquid manure.
- (21) "Wastes" has the meaning given in ORS 468B.005(7).
- (22) "Water" or "the waters of the state" has the meaning given in ORS 468B.005(8).
- Stat. Auth.: ORS 561.190 & ORS 561.191  
 Stats. Implemented: OL Ch. 248, HB 2156  
 Hist.: AD 12-1990, f. & cert. ef. 6-4-90; AD 8-1994, f. & cert. ef. 7-26-94; DOA 15-2001(Temp), f. & cert. ef. 7-2-01 thru 12-28-01; DOA 28-2001, f. & cert. ef. 12-31-01
- 603-074-0015**

### **Complaint Evaluation**

- (1) "Complaint" means information provided by a person concerning possible violations of ORS chapter 468 or 468B or any rule, order, or permit adopted thereunder and relating to the control and prevention of water pollution from a confined animal feeding operation as defined in OAR 603-074-0010.
- (2) If the department finds, upon investigation of the complaint, that the complaint was

*groundless and made for the purposes of harassing the operator, the department may refuse to consider future complaints made by the complainant. Such a determination may include an evaluation of:*

*(a) Relationship between the operator and complainant;*



- (b) Number and validity of previous complaints filed by complainant against the operator;
- (c) Frequency of complaints filed by complainant against the operator.

Stat. Auth.: ORS 561.190 & ORS 561.191

Stats. Implemented: OL Ch. 248, HB 2156

Hist.: DOA 15-2001(Temp), f. & cert. ef. 7-2-01 thru 12-28-01

#### **603-074-0016**

##### **Complaint Evaluation**

(1) "Complaint" means information provided by a person concerning possible violations of ORS Chapter 468 or 468B or any rule, order, or permit adopted thereunder and relating to the control and prevention of water pollution from a confined animal feeding operation as defined in OAR 603-074-0010.

(2) If the department finds, upon investigation of the complaint, that the complaint was groundless and made for the purposes of harassing the operator, the department may refuse to consider future complaints made by the complainant. Such a determination may include an evaluation of:

- (a) Relationship between the operator and complainant;
- (b) Number and validity of previous complaints filed by complainant against the operator;
- (c) Frequency of complaints filed by complainant against the operator.

Stat. Auth.: ORS 561.190 & ORS 561.191

Stats. Implemented: OL Ch. 248, HB 2156

Hist.: DOA 28-2001, f. & cert. ef. 12-31-01

#### **603-074-0020**

##### **Fees: Application Eligibility and Requirements**

(1) All persons operating a confined animal feeding operation with wastewater treatment works and with animals contained in a confined area for four months or more shall submit an annual registration fee of \$25 to the department.

(2) The annual registration fee shall be paid to the department and be effective with the state's fiscal year July 1 - June 30 and shall be paid no later than July 31. The fee shall be paid on an annual basis by those persons described in section (1) of this rule.

(3) All fees shall be paid to the department and are non-refundable and non-transferable.

Stat. Auth.: ORS 561.190 & ORS 561.191

Stats. Implemented: OL Ch. 248, HB 2156

Hist.: AD 12-1990, f. & cert. ef. 6-4-90; AD 8-1994, f. & cert. ef. 7-26-94; DOA 15-

2001(Temp), f. & cert. ef. 7-2-01 thru 12-28-01; DOA 28-2001, f. & cert. ef. 12-31-01

### **Enforcement Procedures**

#### **603-074-0030**

##### **Consolidation of Enforcement Proceedings**

Notwithstanding that each and every violation is a separate and distinct offense, and in cases of continuing violations, that each day's continuance is a separate and distinct violation unless otherwise determined by the department, proceedings for the assessment of multiple civil penalties for multiple violations against an owner or operator may be consolidated into a single proceeding.

Stat. Auth.: ORS 468B.217, ORS 468B.230 & ORS 561

Stats. Implemented: ORS 561.175

Hist.: AD 8-1994, f. & cert. ef. 7-26-94

#### **603-074-0040**

##### **Enforcement Actions**

(1) A Notice of Noncompliance:

- (a) Shall inform the owner or operator of the violation, including a reference to a particular

- statute, administrative rules or order involved, the location of the violation when appropriate, and the consequences of the violation or future violations;
- (b) Shall direct the subject owner or operator to perform those actions necessary to comply with the particular statute, administrative rules or orders involved.
  - (c) Shall specify a reasonable period of time by which compliance is to be achieved not to exceed 30 business days after the respondent receives the notice, or if the violation requires more than 30 days to correct, a period of time contained in a plan of correction acceptable to the department;
  - (d) Shall be issued by the director or the director's designee;
  - (e) Shall be in writing and shall be served personally or by registered or certified mail;
  - (f) Shall in all cases also be mailed or delivered to the legal owner of the property;
  - (g) Shall be an order other than a contested case for purposes of judicial review.
- (2) A plan of Correction:
- (a) Shall include a statement of the actions that must be taken by the owner or operator to eliminate the violation and shall include a schedule stating the time by which each of the actions is required to be accomplished to achieve compliance;
  - (b) May include requirements for the owner or operator to report the completion of specific actions;
  - (c) Shall be in writing and shall be sent to the owner or operator by registered or certified mail or served personally;
  - (d) Shall be an order other than a contested case for the purposes of judicial review.
- (3) The department shall make a reasonable attempt to consult with the subject owner or operator in the development of a plan of correction.
- (4) Failure to perform any of the requirements of a plan of correction may be considered by the department to be a failure to correct the violation within the period of time set for correction by the department.
- (5) A Notice of Civil Penalty Assessment:
- (a) Shall be issued by the director or the director's designee;
  - (b) Shall be issued in a manner consistent with the provisions of ORS 183.415, ORS 468B.230 and OAR Chapter 137;
  - (c) Shall be in writing and shall be served personally or by registered or certified mail.
- Stat. Auth.: ORS 468B.217, ORS 468B.230 & ORS 561  
 Stats. Implemented: ORS 561.175  
 Hist.: AD 8-1994, f. & cert. ef. 7-26-94

#### **603-074-0050**

##### **Hearing Procedures**

All formal hearings requested by the respondent concerning a civil penalty assessment shall be conducted in accordance with applicable contested case procedures as outlined in ORS 183.310 to 183.550, and OAR Chapter 137

Stat. Auth.: ORS 468B.217, ORS 468B.230 & ORS 561

Stats. Implemented: ORS 561.175

Hist.: AD 8-1994, f. & cert. ef. 7-26-94

#### **603-074-0060**

##### **Entry of Order and Appeal Rights**

(1) If a person having received a notice of civil penalty assessment fails to request a hearing as specified in OAR 603-074-0050, or if after the hearing the person is found to be in violation of the provisions of these rules, an order may be entered by the department assessing a civil penalty.

(2) The order shall be signed by the director or the director's designee.

(3) The order may be appealed pursuant to ORS 183.480 to 183.497.

*(4) An order assessing a civil penalty becomes due and payable and maybe enforced as provided by ORS 183.090.*

*Stat. Auth.: ORS 468B.217, ORS 468B.230 & ORS 561*

*Stats. Implemented: ORS 561.175*

*Hist.: AD 8-1994, f. & cert. ef. 7-26-94*

**603-074-0070**

**Civil Penalty Assessment**

*(1) In addition to any other penalty provided by law, the department may assess a civil penalty against the owner or operator of a confined animal feeding operation for failure to comply with a provision of ORS Chapter 468 or 468B or any rule adopted under or a permit issued under ORS Chapter 468 or 468B, relating to the control and prevention of water pollution from a confined animal feeding operation. The amount of the civil penalty shall be determined using the two matrices contained in OAR 603-074-0080 in conjunction with the formula contained in OAR 603-074-0080(4).*

*(a) Except for those animal feeding operations defined in OAR 603-074-0010(3)(b), the amount of the initial civil penalty may not exceed \$2,500 and any subsequent civil penalties for a repeat occurrence may not exceed \$10,000 per violation.*

*(b) For those animal feeding operations defined in OAR 603-074-0010(3)(b), civil penalties may not exceed \$5,000 per violation and any subsequent civil penalties for a repeat occurrence may not exceed \$10,000 per violation.*

*(2) Prior to assessment of a civil penalty for a violation, the department shall provide a notice of noncompliance to the owner or operator. No advance notice or period to achieve compliance prior to assessment of a civil penalty shall be required under section (1) of this rule and the department may issue a notice of civil penalty assessment if:*

*(a) The violation is intentional; or*

*(b) The owner or operator has received a previous notice of the same or similar violation; or*

*(c) The facility meets the definition of an animal feeding operation as defined in OAR 603-074-0010(3)(b).*

*(3) The amount of any civil penalty imposed shall be reduced by the amount of any civil penalty imposed by the Environmental Quality Commission or the Department of Environmental Quality or the United States Environmental Protection Agency, if the latter penalties are imposed on the same person and are based on the same violation.*

*(4) Magnitude of Violation: The magnitude of a violation shall be categorized as follows:*

*(a) Category I (Major):*

*(A) A violation of a department order issued as part of or in connection with a formal enforcement action;*

*(B) Failure to provide access to premises or records when required by statute, rule or order;*

*(C) Any direct discharge of wastes that enters the waters of the state, either without a waste discharge permit, or from a point not authorized by a waste discharge permit;*

*(D) Submitting records, reports or application forms which are false, misleading, or fraudulent;*

*(E) Failure to provide notification of a spill or upset condition that results in a nonpermitted discharge of waste to waters of the state;*

*(F) Violation of a permit compliance schedule;*

*(G) Any violation of any pretreatment standard or requirement by a user of a municipal treatment works which either impairs or damages the treatment works, or causes major harm or poses a major risk of harm to public health or the environment.*

*(b) Category II (Moderate):*

- (A) Failure to submit a plan or report as required by rule, permit or order;
- (B) Placing wastes such that the wastes are likely to enter the waters of the state by any means;
- (C) Any violation related to water quality which is not classified elsewhere in these rules as major or minor.
- (c) Category III (Minor):
  - (A) Failure to operate in accordance with an animal waste management plan when one has been approved by the department;
  - (B) Failure to submit a discharge monitoring report on time or failure to submit a completed discharge monitoring report.
- (5) The gravity of effect of the violation shall be determined by consideration of the individual or cumulative possibility of harm to public health or the environment caused by a violation or violations. Gravity of effect shall be classified as high, medium or low. The existence of one or more factors determined to be high level shall result in the gravity of effect considered to be of high level. Lacking any factor determined to be of high level, the existence of one or more factors of medium level shall result in the gravity of effect to be considered to be of medium level. Lacking any factor of high or medium level shall result in the gravity being of low level:
  - (a) Gravity of Effect – High Level:
    - (A) Evidence of significant injury to crops, wildlife or livestock;
    - (B) Surface or groundwater contamination of a level that poses a significant risk of harm to public health or the environment.
  - (b) Gravity of Effect – Medium Level: Surface or groundwater contamination that causes a loss of beneficial uses or a violation of applicable water quality standards, but does not pose a significant threat to human health or the environment.
  - (c) Gravity of Effect – Low Level: Water contamination not found or not found at a level in excess of applicable water quality standards.
- (6) Pursuant to ORS 468B.220, any owner or operator of a confined animal feeding operation who has not applied for or does not have a permit required by ORS 468B.050 shall be assessed a civil penalty of \$500 in addition to other penalties that the director may assess.
- (7) Notwithstanding section (1) above, the department may assess a penalty larger than that specified by the matrices in OAR 603-074-0070 and 603-074-0080 if the violation is committed by an operation defined in OAR 603-074-0010(3)(b) and the department determines that a larger penalty is appropriate given the extraordinary nature of the violation or its environmental consequences. In no event, however, may the penalty be increased above the maximum amount specified in subsection (1)(b) of this rule.

Stat. Auth.: ORS 561.190 & ORS 561.191

Stats. Implemented: OL Ch. 248, HB 2156

Hist.: AD 8-1994, f. & cert. ef. 7-26-94; DOA 15-2001(Temp), f. & cert. ef. 7-2-01 thru 12-28-01; DOA 28-2001, f. & cert. ef. 12-31-01

#### **603-074-0080**

##### **Civil Penalty Determination Procedure**

In determining the amount of a civil penalty to be assessed for any violation, the department shall apply the following procedure:

- (1) Determine the magnitude of the violation as specified in OAR 603-074-0070(4).
- (2) Determine the gravity of effect pertinent to the violation as specified in OAR 603-074-0070(5).
- (3) Using the magnitude of the violation and the gravity of effect identified, and depending on whether it is the first or a repeat violation, determine the base penalty (B) by reference

to the appropriate matrix contained in OAR 603-074-0080.

### **Civil Penalty Matrix for First Violation**

#### **Gravity of Effect**

<b>Magnitude of Violation</b>	<b>High</b>	<b>Medium</b>	<b>Low</b>
Category 1 (Major)	\$1,200	\$800	\$400
Category II (Moderate)	\$ 600	\$400	\$200
Category III (Minor)	\$ 240	\$120	\$ 50

### **Civil Penalty Matrix for Repeat Violations**

#### **Gravity of Effect**

<b>Magnitude of Violation</b>	<b>High</b>	<b>Medium</b>	<b>Low</b>
Category I (Major)	\$5,000	\$2,400	\$800
Category II (Moderate)	\$1,600	\$ 800	\$400
Category III (Minor)	\$ 400	\$ 200	\$100

(4) Calculate the amount of the civil penalty to be assessed utilizing the formula:

$$B + [(1 \times B) (P + H + R)] = \text{Penalty Amount}$$

where:

(a) *B* = Base penalty is the primary penalty for a given violation derived from the appropriate matrix contained in OAR 603-074-0080;

(b) *P* = Past occurrence of violations. *P* will be weighted from 0 to 6 in the following manner:

(A) 0 = no prior violation or insufficient evidence on which to base a finding;

(B) 1 = past occurrence of a category III violation;

(C) 2 = past occurrence of a Category II violation or two category III violations;

(D) 3 = past occurrence of a Category I violation, two Category II violations, or three Category III violations;

(E) 4 = past occurrence of two Category I violations, three Category II violations or four Category III violations;

(F) 5 = past occurrence of three Category I violations, four Category II violations, or five or more Category III violations;

(G) 6 = past occurrence of more than three Category I violations or five or more Category II violations.

(c) *H* = History of the person in taking all feasible steps or procedures necessary and appropriate to prevent or correct a violation. *H* will be weighted from -2 to 2 in the following way:

(A) -2 = the person took all feasible steps to correct any prior violations;

(B) 0 = there is no prior history or insufficient information on which to base a finding;

(C) 1 = the person took some, but not all feasible steps to correct prior violations;

(D) 2 = the person took no action to correct prior violations.

(d) *R* = Preventability of the violation and whether negligence or misconduct was involved. *R* will be weighted from -2 to 7 in the following way:

(A) -2 = the person's actions determined to be violative were unavoidable;

(B) 0 = information is insufficient to make any finding;

(C) 3 = the person's actions determined to violative were reasonable avoidable;

(D) 7 = the person's actions were flagrant or reckless.

(5) A civil penalty imposed under the applicable statutes and these rules may be remitted or reduced at the director's discretion upon such terms and conditions that are proper and consistent with public health and safety.

*(6) At the discretion of the director, a respondent who is unable to pay the full amount of a civil penalty may be allowed to pay the civil penalty by means of a schedule of payments which may include payment of interest on the unpaid balance for any delayed payments.*  
*Stat. Auth.: ORS 468B.217, ORS 468B.230 & ORS 561*  
*Stats. Implemented: ORS 561.175*  
*Hist.: AD 8-1994, f. & cert. ef. 7-26-94*

# Attachment 5

State of Oregon, Revised Statutes  
**Chapter 468B — Water Quality**  
**2001 EDITION**  
**WATER POLLUTION CONTROL**  
**(Generally)**

**468B.005 Definitions for water pollution control laws.** As used in the laws relating to water pollution, unless the context requires otherwise:

(1) "Disposal system" means a system for disposing of wastes, either by surface or underground methods and includes municipal sewerage systems, domestic sewerage systems, treatment works, disposal wells and other systems.

(2) "Industrial waste" means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

(3) "Pollution" or "water pollution" means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.

(4) "Sewage" means the water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. The admixture with sewage of wastes or industrial wastes shall also be considered "sewage" within the meaning of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(5) "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.

(6) "Treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes.

(7) "Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive or other substances which will or may cause pollution or tend to cause pollution of any waters of the state.

(8) "Water" or "the waters of the state" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. [Formerly 449.075 and then 468.700]

**468B.010 Authority of commission over water pollution; construction.** (1) Except as otherwise provided in ORS 469.300 to 469.563, 469.590 to 469.619 and 469.930, insofar as the authority of the Environmental Quality Commission over water pollution granted by ORS 448.305, 454.010 to 454.040, 454.205 to 454.225, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B is inconsistent with any other law, or authority granted to any other state agency, the authority of the commission shall be controlling.

(2) The water pollution control laws of this state shall be liberally construed for the accomplishment of the purposes set forth in ORS 468B.015. [Formerly 449.070 and then 468.705]

**468B.015 Policy.** Whereas pollution of the waters of the state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, and whereas the problem of water pollution in this state is closely related to the problem of water pollution in adjoining states, it is hereby declared to be the public policy of the state:

(1) To conserve the waters of the state;

(2) To protect, maintain and improve the quality of the waters of the state for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, municipal, recreational and other legitimate beneficial uses;

(3) To provide that no waste be discharged into any waters of this state without first receiving the necessary treatment or other corrective action to protect the legitimate beneficial uses of such waters;

(4) To provide for the prevention, abatement and control of new or existing water pollution; and

(5) To cooperate with other agencies of the state, agencies of other states and the federal government in carrying out these objectives. [Formerly 449.077 and then 468.710]

**468B.020 Prevention of pollution.** (1) Pollution of any of the waters of the state is declared to be not a reasonable or natural use of such waters and to be contrary to the public policy of the State of Oregon, as set forth in ORS 468B.015.

(2) In order to carry out the public policy set forth in ORS 468B.015, the Department of Environmental Quality shall take such action as is necessary for the prevention of new pollution and the abatement of existing pollution by:

(a) Fostering and encouraging the cooperation of the people, industry, cities and counties, in order to prevent, control and reduce pollution of the waters of the state; and

(b) Requiring the use of all available and reasonable methods necessary to achieve the purposes of ORS 468B.015 and to conform to the standards of water quality and purity established under ORS 468B.048. [Formerly 449.095 and then 468.715]

**468B.025 Prohibited activities.** (1) Except as provided in ORS 468B.050 or 468B.053, no person shall:

(a) Cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means.

(b) Discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality standards established by rule for such waters by the Environmental Quality Commission.

(2) No person shall violate the conditions of any waste discharge permit issued under ORS 468B.050.

(3) Violation of subsection (1) or (2) of this section is a public nuisance. [Formerly 449.079 and then 468.720; 1997 c.286 §5]

**468B.030 Effluent limitations.** In relation to the waters of the state, the Environmental Quality Commission by rule may establish effluent limitations, as defined in Section 502 of the Federal Water Pollution Control Act, as amended by Public Law 92-500, October 18, 1972, and other minimum requirements for disposal of wastes, minimum requirements for operation and maintenance of disposal systems, and all other matters pertaining to standards of quality for the waters of the state. The commission may perform or cause to be performed any and all acts necessary to be performed by the state to implement within the jurisdiction of the state the provisions of the Federal Water Pollution Control Act of October 18, 1972, and Acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto. [Formerly 449.081 and then 468.725]

**468B.032 Alternative enforcement proceeding; request; public notice; fees.** (1) In addition to enforcement proceedings pursuant to ORS 468.090 for a violation of a provision, rule, permit or order under this chapter, the Department of Environmental Quality shall implement the procedures established under this section upon the request of the person to whom the notice of the civil penalty or other formal enforcement action is addressed if the person files the request within 20



days from the date of service of the notice. The written request shall serve in lieu of any other prescribed response.

(2) The department shall provide public notice of, and reasonable opportunity to comment in writing on, the civil penalty or other formal enforcement action.

(3) After the comment period closes, the department may determine either to modify the civil penalty or other formal enforcement action based on any comment received under subsection (2) of this section or to reissue the original civil penalty or other formal enforcement action. The department shall serve the person to whom the notice of civil penalty or other formal enforcement action was addressed with a copy of any comments filed and a new notice that includes the determination of the department. The person shall then have 20 days from the date of service of the new notice in which to make written application for a hearing.

(4) The department shall give notice to any person who commented under subsection (2) of this section of the new notice that includes the determination of the department under subsection (3) of this section. The department also shall give notice to any person who commented under subsection (2) of this section if a hearing is requested under subsection (3) of this section.

(5) If a person does not apply for a hearing under subsection (3) of this section, a person who commented under subsection (2) of this section may request that the department hold a hearing if the person who commented makes the request in writing within 30 days of the mailing of the notice given under subsection (4) of this section. However, the department shall hold a hearing only if the request includes material evidence that the department did not consider when the department issued the civil penalty or other formal enforcement action. If the department denies the request for a hearing, the department shall provide a copy of the denial and the reasons for the denial to the requester and shall provide public notice of the denial that includes the reasons for the denial.

(6) In a hearing under subsection (3) or (5) of this section, the person subject to the civil penalty or other formal enforcement action and any person who commented under subsection (2) of this section shall have a reasonable opportunity to be heard and to present evidence. The department shall conduct the hearing in accordance with ORS 183.090.

(7) If a person does not request a hearing pursuant to subsection (3) or (5) of this section, the department shall issue the civil penalty or other formal enforcement action.

(8) For purposes of judicial review under ORS 183.480 to 183.500, a person who comments under subsection (2) of this section and includes a request in writing to be a party to the civil penalty or other formal enforcement action shall have standing to be a party to an agency proceeding subject to judicial review of a final order. For the procedures established by this section only, the civil penalty or other formal enforcement action shall be deemed to be commenced for purposes of the state's implementation of section 309(g)(6) of the Federal Water Pollution Control Act, as amended, when the department first notifies a person in writing that a violation has been documented and that the violation is being referred for formal enforcement action or will result in a civil penalty or other formal enforcement action.

(9) The Environmental Quality Commission shall ensure that state enforcement procedures for implementing section 309(g)(6) of the Federal Water Pollution Control Act, as amended, are comparable to and not greater than the federal enforcement procedures for enforcing that federal Act.

(10) Any person who submits a request under subsection (1) of this section shall submit with the request a basic process fee in the amount of \$2,000 and a refundable hearings fee in the amount of \$3,650 to pay the expenses of the department incurred under this section. If a hearing is not conducted under this section, the department shall return the refundable hearing fee to the person who submitted the request under subsection (1) of this section. All fees received under this subsection shall be deposited into the State Treasury to the credit of an account of the department. Such moneys are continuously appropriated to the department for payment of the costs of the department in carrying out the provisions of this section. [1999 c.975 §2]

**468B.035 Implementation of Federal Water Pollution Control Act.** (1) The Environmental Quality Commission may perform or cause to be performed any acts necessary to be performed by the state to implement within the jurisdiction of the state the provisions of the Federal Water Pollution Control Act, P.L. 92-500, as amended, and federal regulations or guidelines issued pursuant to the Act. The commission may adopt, modify or repeal rules, pursuant to ORS 183.310

to 183.550, for the administration and implementation of this subsection.

(2) The State Department of Agriculture may perform or cause to be performed any acts necessary to be performed by the state to implement the provisions of the Federal Water Pollution Control Act, P.L. 92-500, as amended, and any federal regulations or guidelines issued pursuant to the Act, relating to the control and prevention of water pollution from livestock and other animal-based agricultural operations. The department may adopt rules pursuant to ORS 183.310 to 183.550 for the administration and implementation of this subsection. [Formerly 468.730; 2001 c.248 §3]

(Surface Water)

**468B.040 Certification of hydroelectric power project; comments of affected state agencies.**

(1) The Director of the Department of Environmental Quality shall approve or deny certification of any federally licensed or permitted activity related to hydroelectric power development, under section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended. In making a decision as to whether to approve or deny such certification, the director shall:

(a) Solicit and consider the comments of all affected state agencies relative to adverse impacts on water quality caused by the project, according to sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(b) Approve or deny a certification only after making findings that the approval or denial is consistent with:

(A) Rules adopted by the Environmental Quality Commission on water quality;

(B) Provisions of sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;

(C) Except as provided in subsection (2) of this section, standards established in ORS 543.017 and rules adopted by the Water Resources Commission implementing such standards; and

(D) Except as provided in subsection (2) of this section, standards of other state and local agencies that are

consistent with the standards of ORS 543.017 and that the director determines are other appropriate requirements of state law according to section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(2) If the proposed certification is for the reauthorization of a federally licensed project, as defined in ORS 543A.005, or for a project that is subject to federal relicensing but that operates under a water right that does not expire, the director shall not determine consistency under subsection (1)(b)(C) and (D) of this section, but shall determine whether the approval or denial is consistent with the rules and provisions referred to in subsection (1)(b)(A) and (B) of this section, standards established in ORS 543A.025 (2) to (4), rules adopted by the Water Resources Commission implementing such standards and rules of other state and local agencies that are consistent with the standards of ORS 543A.025 (2) to (4) and that the director determines are other appropriate requirements of state law according to section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(3) If the proposed certification is for the reauthorization of a federally licensed project, as defined in ORS 543A.005, or for a project that is subject to federal relicensing but that operates under a water right that does not expire, the director shall act in accordance with the recommendation of the Hydroelectric Application Review Team, except as provided in ORS 543A.110. If the proposed certification is for a project that is subject to federal relicensing but that operates under a water right that does not expire, and the Hydroelectric Application Review Team develops a unified state position under ORS 543A.400 (4)(b), the director shall act in accordance with the recommendation of the Hydroelectric Application Review Team, except as provided in ORS 543A.110. [Formerly 468.732; 1993 c.544 §1; 1997 c.449 §40]

**468B.045 Certification of change to hydroelectric power project; notification of federal agency.** Within 60 days after the Department of Environmental Quality receives notice that any federal agency is considering a permit or license application related to a change to a hydroelectric project or proposed hydroelectric project that was previously certified by the Director of the Department of Environmental Quality according to section 401 of the Federal Water Pollution Control Act P.L. 92-500, as amended:

(1) The director shall:

(a) Solicit and consider the comments of all affected state agencies relative to adverse impacts on

water quality caused by changes in the project, according to sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(b) Approve or deny a certification of the proposed change after making findings that the approval or denial is consistent with:

(A) Rules adopted by the Environmental Quality Commission on water quality;

(B) Provisions of sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;

(C) Except as provided in subsection (2) of this section, standards established in ORS 543.017 and rules adopted by the Water Resources Commission implementing such standards; and

(D) Except as provided in subsection (2) of this section, standards of other state and local agencies that are consistent with the standards of ORS 543.017 and that the director determines are other appropriate requirements of state law according to section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(2) If the proposed certification is for a change to a federally licensed project, as defined in ORS 543A.005, that has been reauthorized under ORS 543A.060 to 543A.300, or for a change to a project that is subject to federal relicensing but that operates under a water right that does not expire, the director shall not determine consistency under subsection (1)(b)(C) and (D) of this section, but shall determine consistency with the rules and provisions referred to in subsection (1)(b)(A) and (B) of this section, standards established in ORS 543A.025 (2) to (4), rules adopted by the Water Resources Commission implementing such standards and rules of other state and local agencies that are consistent with the standards of ORS 543A.025 (2) to (4) and that the director determines are other appropriate requirements of state law according to section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(3) On the basis of the evaluation and determination under subsections (1) and (2) of this section, the director shall notify the appropriate federal agency that:

(a) The proposed change to the project is approved; or

(b) There is no longer reasonable assurance that the project as changed complies with the applicable provisions of the Federal Water Pollution Control Act, P.L. 92-500, as amended, because of changes in the proposed project since the director issued the construction license or permit certification. [Formerly 468.734; 1993 c.544 §2; 1997 c.449 §40a]

**468B.046 Reauthorization of hydroelectric project not to limit authority of department related to certification of project for water quality purposes.** (1) Except as provided in ORS 543A.110, nothing in ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710 and ORS chapter 543A shall be construed to limit or affect any authority of the Director of the Department of Environmental Quality under existing law to establish conditions for any certification granted under ORS 468B.040, 468B.045 and 33 U.S.C. 1341, including but not limited to conditions for monitoring, review and enforcement of compliance with the certification and water quality standards during construction, operation and decommissioning of a project.

(2) Nothing in ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710 and ORS chapter 543A, including but not limited to review of applications by the Hydroelectric Application Review Team, shall affect the authority of the Director of the Department of Environmental Quality to act on a request for water quality certification as necessary to avoid certification being deemed waived under the one-year period prescribed by 33 U.S.C. 1341(a)(1). [1997 c.449 §40d]

**468B.047 Fees for state certification under section 401 of Federal Water Pollution Control Act; disposition of fees.** (1) The Environmental Quality Commission may establish, by rule, a schedule of fees for state certification under section 401 of the Federal Water Pollution Control Act, PL 92-500 as amended. The commission shall not assess fees under subsections (1) and (2) of this section for activities:

(a) That have an operating permit for surface mining under ORS chapter 517;

(b) Relating to commercial sand and gravel removal operations;

(c) Involving removal of less than 500 cubic yards of material; or

(d) Involving a fill of less than two acres.

(2) As used in subsections (1) and (2) of this section, "fill" and "removal" have the meanings given in ORS 196.800.

(3) Any fees received under subsections (1) and (2) of this section shall be deposited in the State Treasury to the credit of an account of the Department of Environmental Quality and are continuously appropriated to meet the administrative expenses of the state certification program under subsections (1) and (2) of this section. [Formerly 468.068]

**468B.048 Standards of quality and purity; factors to be considered; meeting standards.** (1)

The Environmental Quality Commission by rule may establish standards of quality and purity for the waters of the state in accordance with the public policy set forth in ORS 468B.015. In establishing such standards, the commission shall consider the following factors:

- (a) The extent, if any, to which floating solids may be permitted in the water;
- (b) The extent, if any, to which suspended solids, settleable solids, colloids or a combination of solids with other substances suspended in water may be permitted;
- (c) The extent, if any, to which organisms of the coliform group, and other bacteriological organisms or virus may be permitted in the waters;
- (d) The extent of the oxygen demand which may be permitted in the receiving waters;
- (e) The minimum dissolved oxygen content of the waters that shall be maintained;
- (f) The limits of other physical, chemical, biological or radiological properties that may be necessary for preserving the quality and purity of the waters of the state;
- (g) The extent to which any substance must be excluded from the waters for the protection and preservation of public health; and
- (h) The value of stability and the public's right to rely upon standards as adopted for a reasonable period of time to permit institutions, municipalities, commerce, industries and others to plan, schedule, finance and operate improvements in an orderly and practical manner.

(2) Standards established under this section shall be consistent with policies and programs for the use and control of water resources of the state adopted by the Water Resources Commission under ORS 536.220 to 536.540.

(3) Subject to the approval of the Department of Environmental Quality, any person responsible for complying with the standards of water quality or purity established under this section shall determine the means, methods, processes, equipment and operation to meet the standards.

[Formerly 449.086 and then 468.735]

**468B.050 When permit required.** (1) Except as provided in ORS 468B.053 or 468B.215, without first obtaining a permit from the Director of the Department of Environmental Quality or the State Department of Agriculture, which permit shall specify applicable effluent limitations, no person shall:

- (a) Discharge any wastes into the waters of the state from any industrial or commercial establishment or activity or any disposal system.
- (b) Construct, install, modify or operate any disposal system or part thereof or any extension or addition thereto.
- (c) Increase in volume or strength any wastes in excess of the permissive discharges specified under an existing permit.
- (d) Construct, install, operate or conduct any industrial, commercial, confined animal feeding operation or other establishment or activity or any extension or modification thereof or addition thereto, the operation or conduct of which would cause an increase in the discharge of wastes into the waters of the state or which would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized.
- (e) Construct or use any new outlet for the discharge of any wastes into the waters of the state.

(2) As used in this section, "confined animal feeding operation" has the meaning given that term in rules adopted by the State Department of Agriculture or the Department of Environmental Quality.

[Formerly 449.083 and then 468.740; 1997 c.286 §6; 2001 c.248 §4]

**468B.053 Alternatives to obtaining water quality permit.** In lieu of a permit required under ORS 468B.025 or 468B.050, the Environmental Quality Commission by rule may:

- (1) Exempt de minimis discharges from permit requirements.
- (2) Establish performance-based criteria for exempt operations and discharges.
- (3) Require an operator or person discharging waste exempt under subsection (1) of this section to:
  - (a) Comply with the criteria established under subsection (2) of this section; and
  - (b) Monitor performance and certify and report the results to the Department of Environmental Quality. [1997 c.286 §2]

**Note:** 468B.053 was added to and made a part of ORS chapter 468B by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**468B.055 Plan approval required; exemptions; rules.** (1) Except as provided in subsection (3) of this section, all plans and specifications for the construction, installation or modification of disposal systems, treatment works and sewerage systems, shall be submitted to the Department of Environmental Quality for its approval or rejection pursuant to rules of the Environmental Quality Commission.

(2) No construction, installation or modification of the type described in subsection (1) of this section shall be commenced until the plans and specifications submitted to the department under subsection (1) of this section are approved. If the disposal or discharge is for a chemical process mine, as defined in ORS 517.953, such review and approval shall be included as part of the consolidated application process under ORS 517.952 to 517.989. Any construction, installation or modification must be in accordance with the plans and specifications approved by the department.

(3) By rule, the Environmental Quality Commission may exempt from the requirement of subsection (1) of this section the class or classes of disposal systems, treatment works and sewerage systems for which the commission finds plan submittal and approval unnecessary or impractical. [Formerly 468.742]

**468B.060 Liability for damage to fish or wildlife or habitat; agency to which damages payable.** (1) Where the injury, death, contamination or destruction of fish or other wildlife or injury or destruction of fish or wildlife habitat results from pollution or from any violation of the conditions set forth in any permit or of the orders or rules of the Environmental Quality Commission, the person responsible for the injury, death, contamination or destruction shall be strictly liable to the state for the value of the fish or wildlife so injured or destroyed and for all costs of restoring fish and wildlife production in the affected areas, including habitat restoration.

(2) In addition to the penalties provided for by law, the state may seek recovery of such damages in any court of competent jurisdiction in this state if the person responsible under subsection (1) of this section fails or refuses to pay for the value of the fish or wildlife so destroyed and for all costs of restoring fish and wildlife production in the affected areas, including habitat restoration, within a period of 60 days from the date of mailing by registered or certified mail of written demand therefore.

(3) Any action or suit for the recovery of damages described in subsection (1) of this section shall be brought in the name of the State of Oregon upon relation of the Department of Environmental Quality or State Department of Fish and Wildlife or the Attorney General. Amounts recovered under this section shall be paid to the state agency having jurisdiction over the fish or wildlife or fish or wildlife production for which damages were recovered. [Formerly 449.103 and then 468.745]

**468B.062 Use attainability analysis of certain waters of state.** Consistent with the Federal Water Pollution Control Act, P.L. 92-500, as amended, the Department of Environmental Quality may determine whether selected segments of the waters of the state are capable of attaining designated uses. In conducting its use attainability analysis, the department shall include appropriate documentation and defensible data for determining whether subcategories or seasonal uses should be designated. The Director of the Department of Environmental Quality shall appoint an advisory group to nominate those waters of the state for which use attainability analysis is most warranted. [1997 c.770 §2]

**468B.064 Follow-up assessments of waters of state that exceed numeric temperature criteria.** (1) The Department of Environmental Quality may perform follow-up assessments of waters of the state that are included in the 1994-1996 list pursuant to section 303 (d) of the Federal Water Pollution Control Act, P.L. 92-500, as amended, for exceeding numeric temperature water quality criteria. The department shall give priority in performing follow-up assessments to those waters of the state listed primarily on the basis of temperature data from 1991 to 1994 and for which follow-up data are now available. The department may use follow-up data collected by a watershed council, university, soil and water conservation district or any other individual or group using data collection protocols approved by the department.

(2) Subject to available resources, the department shall act promptly to update the list developed pursuant to section 303 (d) of the Federal Water Pollution Control Act, P.L. 92-500, as amended,

when appropriate based on the follow-up assessments under subsection (1) of this section. [1997 c.770 §3]

**468B.065** [Formerly 468.750; renumbered 468B.083 in 1997]

**468B.066 Report on development of use attainability analysis.** The Department of Environmental Quality shall report regularly to the joint legislative committee created pursuant to ORS 171.551 on the development of the use attainability analysis under ORS 468B.062 and 468B.064. [1997 c.770 §4; 1999 c.270 §4]

**468B.070 Prohibited activities for certain municipalities.** (1) No municipality shall:

(a) Dump polluting substances into any public or private body of water that empties directly or indirectly into any navigable body of water in or adjacent to a municipality, except by permit issued by the Department of Environmental Quality.

(b) Dump polluting substances into any open dump or sanitary landfill where by drainage or seepage any navigable body of water in or adjacent to a municipality may be affected adversely unless:

(A) The municipality is operating a sanitary landfill in accordance with the terms and conditions of a valid permit;

(B) The Environmental Quality Commission finds the municipality is improving for other purposes each section of the landfill as it is completed; and

(C) The commission finds the municipality is continuously developing and implementing, where feasible, improvements in its solid waste disposal program that incorporate new and alternative methods, including recycling, reuse and resource recovery.

(2) As used in this section:

(a) "Municipality" means any city having a population of 250,000 or more or any home-rule county having a population of 350,000 or more.

(b) "Polluting substances" means dead animal carcasses, excrement, and putrid, nauseous, noisome, decaying, deleterious or offensive substances including refuse of any kind or description.

(3) Any municipality found by the commission to have performed any of the actions prohibited by subsection (1) of this section shall be ineligible for any grants or loans to which it would otherwise be eligible from the Pollution Control Fund pursuant to ORS 468.195 to 468.245 unless:

(a) The municipality is operating a sanitary landfill in accordance with the terms and conditions of a valid permit;

(b) The commission finds the municipality is improving for other purposes each section of the landfill as it is completed; and

(c) The commission finds the municipality is continuously developing and implementing, where feasible, improvements in its solid waste disposal program that incorporate new and alternative methods, including recycling, reuse and resource recovery. [Formerly 449.113 and then 468.755]

**468B.075 Definitions for ORS 468B.080.** For the purposes of ORS 468B.080, the term:

(1) "Buildings or structures" shall also include but is not limited to floating buildings and structures, houseboats, moorages, marinas, or any boat used as such.

(2) "Sewage" means human excreta as well as kitchen, bath and laundry wastes.

(3) "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and serving of food. [Formerly 449.140 and then 468.765]

**468B.080 Prohibitions relating to garbage or sewage dumping into waters of state.** (1) No garbage or sewage shall be discharged into or in any other manner be allowed to enter the waters of the state from any building or structure unless such garbage or sewage has been treated or otherwise disposed of in a manner approved by the Department of Environmental Quality. All plumbing fixtures in buildings or structures, including prior existing plumbing fixtures from which waste water or sewage is or may be discharged, shall be connected to and all waste water or sewage from such fixtures in buildings or structures shall be discharged into a sewerage system, septic tank system or other disposal system approved by the department pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, (1973 Replacement Part), 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(2) The department may extend the time of compliance for any person, class of persons, municipalities or businesses upon such conditions as it may deem necessary to protect the public health and welfare if it is found that strict compliance would be unreasonable, unduly burdensome

or impractical due to special physical conditions or cause or because no other alternative facility or method of handling is yet available. [Formerly 449.150 and then 468.770]

**468B.083 When motor vehicle parts may be placed in waters of state; rules.** (1) The Environmental Quality Commission shall adopt rules as to the beneficial use of chassis, bodies, shells, and tires of motor vehicles in the waters of the state, including the means and methods of placing them in the waters of the state. In adopting such rules the commission shall consider, among other things:

- (a) The possibility of pollution;
- (b) The esthetics of such use;
- (c) The utility of such use in reclamation projects;
- (d) The degradation of the waters, stream beds or banks; and
- (e) The nature of the waters such as tidewater, slough or running stream.

(2) In the manner described in ORS 468.065, the commission may issue a permit to an applicant to place chassis, bodies, shells or tires of motor vehicles in the waters of this state subject to the rules adopted under this section. [Formerly 468B.065]

**468B.085 Depositing motor vehicles into water prohibited.** Subject to ORS 468B.083, no person, including a person in the possession or control of any land, shall deposit, discard or place any chassis, body or shell of a motor vehicle as defined by ORS 801.360 or of any vehicle as defined by ORS 801.590, or parts and accessories thereof, including tires, into the waters of the state for any purpose, or deposit, discard or place such materials in a location where they may be likely to escape or be carried into the waters of the state by any means. [Formerly 449.109 and then 468.775]

**468B.090 Permit authorized for discharge of shrimp and crab processing by-products; conditions.** (1) The Department of Environmental Quality may issue a permit to discharge shrimp and crab processing by-products into the waters of an Oregon estuary under ORS 468B.050 or 468B.053 for the purpose of enhancing aquatic life production. The permit shall impose the following conditions:

- (a) No toxic substances shall be present in the by-products discharged.
  - (b) The oxygen content of the estuarine waters shall not be reduced.
  - (c) The discharge shall not create a public nuisance.
  - (d) Other beneficial uses of the estuary shall not be adversely affected.
- (2) The department shall consult the State Department of Fish and Wildlife and obtain its approval before issuing a permit under this section. [Formerly 468.777; 1997 c.286 §7]

**468B.093 General permit for discharge of geothermal spring water to surface water.** (1) The Director of the Department of Environmental Quality shall issue a general permit for the discharge of geothermal spring water to surface water. The general permit shall cover any activity with the following characteristics:

- (a) The chemical nature of the water is not changed;
  - (b) The temperature of the water remains unchanged or is reduced; and
  - (c) The surface water into which the geothermal spring water is discharged is the naturally occurring junction of the geothermal spring water and surface water.
- (2) Nothing in subsection (1) of this section shall be construed to preclude the director from issuing a general permit for any other activity involving the discharge of geothermal spring water.
- (3) As used in this section, "geothermal spring water" means water that emerges naturally from the earth as a result of gravity flow or artesian pressure and that is capable of being used for heating as a result of the naturally occurring thermal characteristics of the water. [1997 c.547 §2]

**468B.095 Use of sludge on agricultural, horticultural or silvicultural land; rules.** The Environmental Quality Commission shall adopt by rule requirements for the use of sludge on agricultural, horticultural or silvicultural land including, but not limited to:

- (1) Procedure and criteria for selecting sludge application sites, including providing the opportunity for public comment and public hearing;
- (2) Requirements for sludge treatment and processing before sludge is applied;
- (3) Methods and minimum frequency for analyzing sludge and soil to which sludge is applied;
- (4) Records that a sludge applicator must keep;
- (5) Restrictions on public access to and cropping of land on which sludge has been applied; and

(6) Any other requirement necessary to protect surface water, ground water, public health and soil productivity from any adverse effects resulting from sludge application. [Formerly 468.778]

**Note:** 468B.095 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 468B or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Forest Operations)

**468B.100 Definitions for ORS 468B.105 and 468B.110.** As used in ORS 468B.105 and 468B.110, "forestlands" and "operation" have the meaning for those terms provided in ORS 527.620. [1991 c.919 §22a]

**468B.105 Review of water quality standard affecting forest operations.** Upon request of the State Board of Forestry, the Environmental Quality Commission shall review any water quality standard that affects forest operations on forestlands. The commission's review may be limited to or coordinated with the triennial or any other regularly scheduled review of the state's water quality standards, consistent with ORS 468B.048, 468B.110 and applicable federal law. [1991 c.919 §23]

**468B.110 Authority to establish and enforce water quality standards; limitation on authority; instream water quality standards.** (1) Except as provided in subsection (2) of this section, as necessary to achieve and maintain standards of water quality or purity adopted under ORS 468B.048, the Environmental Quality Commission or Department of Environmental Quality may, by rule or order, impose and enforce limitations or other controls which may include total maximum daily loads, wasteload allocations for point sources and load allocations for nonpoint sources, as provided in the Federal Water Pollution Control Act (33 U.S.C. § 1321) and federal regulations and guidelines issued pursuant thereto.

(2) Unless required to do so by the provisions of the Federal Clean Water Act, neither the Environmental Quality Commission nor the Department of Environmental Quality shall promulgate or enforce any effluent limitation upon nonpoint source discharges of pollutants resulting from forest operations on forestlands in this state. Implementation of any limitations or controls applying to nonpoint source discharges or pollutants resulting from forest operations are subject to ORS 527.765 and 527.770. However, nothing in this section is intended to affect the authority of the commission or the department provided by law to impose and enforce limitations or other controls on water pollution from sources other than forest operations.

(3) When the Environmental Quality Commission establishes instream water quality standards to protect designated beneficial uses in the waters of the state, it shall consider, where applicable, available scientific information including, but not limited to, stream flow, geomorphology and other factors representing the variability and complexity of hydrologic systems and intrinsic water quality conditions.

(4) When the Environmental Quality Commission establishes instream water quality standards, it will also issue guidelines describing how the department and the commission will determine whether water quality standards in waters affected by nonpoint source activities are being met. In developing these guidelines, the commission shall include, where applicable, those physical characteristics such as stream flow, geomorphology, seasons, frequency, duration, magnitude and other factors which represent the variability and complexity of forested and other appropriate hydrologic systems. [1991 c.919 §24]

(Phosphate Cleansing Agents)

**468B.120 Definitions for ORS 468B.120 to 468B.135.** As used in ORS 468B.120 to 468B.135:

(1) "Cleaning agent" means any product, including but not limited to soaps and detergents, containing a surfactant as a wetting or dirt emulsifying agent and used primarily for domestic or commercial cleaning purposes, including but not limited to the cleansing of fabrics, dishes, food utensils and household commercial premises. "Cleaning agent" does not include foods, drugs, cosmetics, insecticides, fungicides and rodenticides or cleaning agents exempted under ORS 468B.135.

(2) "Commercial premises" means any premises used for the purpose of carrying on or exercising any trade, business, profession, vocation, commercial or charitable activity, including but not limited to laundries, hotels, motels and food or restaurant establishments.

(3) "Person" means any individual, firm, partnership or corporation.

(4) "Phosphorus" means elemental phosphorus. [1991 c.764 §3]



**468B.125 Policy to reduce phosphorous pollution.** (1) The Legislative Assembly of the State of Oregon finds that:

(a) Phosphorous loading of the waters of the state is a serious pollution problem affecting water quality in some river basins in the state.

(b) Phosphate detergents contribute significant phosphorous loading to the treated waste water released to the surface waters of the state.

(c) When phosphorous loading becomes a serious pollution problem, federal and state water quality standards may require advanced waste water treatment facilities at public expense, in addition to primary and secondary treatment facilities.

(2) Therefore, the Legislative Assembly declares that it is a policy of this state to reduce phosphorous pollution at its source to maintain existing water quality and to enhance cost-effective wastewater treatment where phosphorous pollution becomes a serious pollution problem. [1991 c.764 §2]

**468B.130 Prohibition on sale or distribution of cleaning agents containing phosphorus;**

**rules.** (1) Except as provided in subsection (2) of this section, no person may sell, offer to sell or distribute for sale within Oregon, any cleaning agent containing more than 0.5 percent phosphorus by weight.

(2) A cleaning agent used in automatic dishwashers may be sold, offered for sale or distributed in Oregon if the cleaning agent is sold, offered for sale or distributed on or after July 1, 1992, and contains 8.7 percent or less phosphorus by weight.

(3) All cleaning agents that are sold in this state shall be labeled with the percent of phosphorus by weight, including equivalency in grams of phosphorus per recommended use level.

(4) The Environmental Quality Commission shall adopt rules governing the labeling requirements imposed by subsection (3) of this section. [1991 c.764 §4]

**468B.135 Exemptions.** ORS 468B.130 (1) and (2) do not apply to any cleaning agent:

(1) Used in dairy, beverage or food processing equipment;

(2) Used as an industrial sanitizer, brightener, acid cleaner or metal conditioner, including phosphoric acid products or trisodium phosphate;

(3) Used in hospitals, veterinary hospitals or clinics or health care facilities;

(4) Used in agricultural production and the production of electronic components;

(5) Used in a commercial laundry for laundry services provided to a hospital, veterinary hospital or clinic or health care facility;

(6) Used by industry for metal cleaning or conditioning;

(7) Manufactured, stored or distributed for use or sale outside Oregon;

(8) Used in any laboratory, including a biological laboratory, research facility, chemical, electronic or engineering laboratory;

(9) Used for cleaning hard surfaces, including household cleansers for windows, sinks, counters, stoves, tubs or other food preparation surfaces and plumbing fixtures;

(10) Used as a water softening chemical, antiscaling chemical or corrosion inhibitor intended for use in closed systems, including but not limited to boilers, air conditioners, cooling towers or hot water systems; and

(11) For which the Department of Environmental Quality determines that the prohibition under ORS 468B.130 (1) and (2) will either:

(a) Create a significant hardship on the user; or

(b) Be unreasonable because of the lack of an adequate substitute cleaning agent. [1991 c.764 §5] (Ground Water)

**468B.150 Definitions for ORS 468B.150 to 468B.190.** As used in ORS 448.268, 448.271 and 468B.150 to 468B.190:

(1) "Area of ground water concern" means an area of the state subject to a declaration by the Department of Environmental Quality under ORS 468B.175 or the Department of Human Services under ORS 448.268.

(2) "Contaminant" means any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance that does not occur naturally in ground water or that occurs naturally but at a lower concentration.

(3) "Ground water management area" means an area in which contaminants in the ground water

have exceeded the levels established under ORS 468B.165, and the affected area is subject to a declaration under ORS 468B.180.

(4) "Fertilizer" has the meaning given that term in ORS 633.311.

(5) "Pesticide" has the meaning given that term in ORS 634.006. [Formerly 468.691; 1995 c.690 §7; 2001 c.914 §24]

**Note:** 468B.150 to 468B.188 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 468B or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**468B.155 State goal to prevent ground water contamination.** The Legislative Assembly declares that it is the goal of the people of the State of Oregon to prevent contamination of Oregon's ground water resource while striving to conserve and restore this resource and to maintain the high quality of Oregon's ground water resource for present and future uses. [Formerly 468.692]

**Note:** See note under 468B.150.

**468B.160 Ground water management and use policy.** In order to achieve the goal set forth in ORS 468B.155, the Legislative Assembly establishes the following policies to control the management and use of the ground water resource of this state and to guide any activity that may affect the ground water resource of Oregon:

(1) Public education programs and research and demonstration projects shall be established in order to increase the awareness of the citizens of this state of the vulnerability of ground water to contamination and ways to protect this important resource.

(2) All state agencies' rules and programs affecting ground water shall be consistent with the overall intent of the goal set forth in ORS 468B.155.

(3) Statewide programs to identify and characterize ground water quality shall be conducted.

(4) Programs to prevent ground water quality degradation through the use of the best practicable management practices shall be established.

(5) Ground water contamination levels shall be used to trigger specific governmental actions designed to prevent those levels from being exceeded or to restore ground water quality to at least those levels.

(6) All ground water of the state shall be protected for both existing and future beneficial uses so that the state may continue to provide for whatever beneficial uses the natural water quality allows. [Formerly 468.693]

**Note:** See note under 468B.150.

**468B.162 Coordination of ground water activities.** (1) The Department of Environmental Quality shall coordinate the following:

(a) Interagency management of ground water as necessary to achieve the goal set forth in ORS 468B.155.

(b) The regulatory activities of any affected state agency responding to the declaration of a ground water management area under ORS 468B.180. As used in this subsection "affected state agency" means any agency having management responsibility for, or regulatory control over the ground water resource of this state or any substance that may contaminate the ground water resource of this state.

(2) The Department of Environmental Quality shall provide staff for project oversight and for those activities authorized under ORS 468B.165 to 468B.188, including scheduling meetings, providing public notice of meetings and other group activities and keeping records of group activities.

(3) In addition to its duties under subsection (1) of this section, the department shall, on or before January 1 of each odd-numbered year, prepare a report to the Legislative Assembly. The report shall include the status of ground water in Oregon, efforts made in the immediately preceding year to protect, conserve and restore Oregon's ground water resources and grants awarded under ORS 468B.169. [Formerly 536.108; 1999 c.1074 §4]

**Note:** See note under 468B.150.

**468B.164 Encouragement of federal actions.** In carrying out its coordination activities under ORS 468B.162, the Department of Environmental Quality shall encourage federal agency actions that are consistent with the water policies of the State of Oregon. [Formerly 536.112]

**Note:** See note under 468B.150.

**468B.165 Ground water contaminants; maximum levels; rules.** (1) Within 90 days after receiving the recommendations of the technical advisory committee under ORS 468B.166, the Environmental Quality Commission shall begin rulemaking to first adopt final rules establishing maximum measurable levels for contaminants in ground water. The commission shall adopt the final rules not later than 180 days after the commission provides notice under ORS 183.335. (2) The adoption or failure to adopt a rule establishing a maximum measurable level for a contaminant under subsection (1) of this section shall not alone be construed to require the imposition of restrictions on the use of fertilizers under ORS 633.311 to 633.479 and 633.994 or the use of pesticides under ORS chapter 634. [Formerly 468.694; 2001 c.914 §25]

**Note:** See note under 468B.150.

**468B.166 Technical advisory committee; duties; membership.** (1) The Department of Environmental Quality shall appoint a nine-member technical advisory committee to develop criteria and a method for the Environmental Quality Commission to apply in adopting by rule maximum measurable levels of contaminants in ground water. The technical advisory committee shall recommend criteria and a method for the development of standards that are protective of public health and the environment. If a federal standard exists, the method shall provide that the Environmental Quality Commission shall first consider the federal standard, and if the Environmental Quality Commission does not adopt the federal standard, the method shall require the Environmental Quality Commission to give a scientifically valid reason for not concurring with the federal standard. As used in this subsection, "federal standard" means a maximum contaminant level, a national primary drinking water regulation or an interim drinking water regulation adopted by the Administrator of the U.S. Environmental Protection Agency pursuant to the federal Safe Drinking Water Act, as amended, 42 U.S.C. 300g-1.

(2) The technical advisory committee appointed under subsection (1) of this section shall be comprised of:

- (a) A toxicologist;
- (b) A health professional;
- (c) A water purveyor;
- (d) A biologist; and
- (e) Technically capable members of the public representing the following groups:
  - (A) Citizens;
  - (B) Local governments;
  - (C) Environmental organizations;
  - (D) Industrial organizations; and
  - (E) Agricultural organizations.

(3) The technical advisory committee may appoint individuals or committees to assist in development of the criteria and maximum measurable levels of contaminants in ground water. An individual or committee appointed by the committee under this subsection shall serve in an advisory capacity only. [Formerly 536.137]

**Note:** See note under 468B.150.

**468B.167 Ground water resource protection strategy; advisory committees.** (1) The Department of Environmental Quality shall implement the following ground water resource protection strategy:

- (a) Coordinate projects and activities of other agencies designed to reduce impacts on ground water from:
  - (A) Commercial and industrial activities;
  - (B) Commercial and residential use of fertilizers and pesticides;
  - (C) Residential and sewage treatment activities; and
  - (D) Any other activity that may result in contaminants entering the ground water.
- (b) Provide educational and informational materials to promote public awareness and involvement in the protection, conservation and restoration of Oregon's ground water resource. Public information materials shall be designed to inform the general public about the nature and extent of ground water contamination, alternatives to practices that contaminate ground water and the effects of human activities on ground water quality. In addition, educational programs shall be designed for specific segments of the population that may have specific impacts on the ground

water resource.

(c) Coordinate the development of local ground water protection programs, including but not limited to local well head protection programs.

(d) Award grants for the implementation of projects approved under the criteria established under ORS 468B.171.

(e) Develop and maintain a centralized repository for information about ground water, including but not limited to:

(A) Hydrogeologic characterizations;

(B) Results of local and statewide monitoring or testing of ground water;

(C) Data obtained from ground water quality protection research or development projects; and

(D) Alternative residential, industrial and agricultural practices that are considered best practicable management practices for ground water quality protection.

(f) Identify research or information about ground water that needs to be conducted or made available.

(g) Cooperate with appropriate federal entities to identify the needs and interests of the State of Oregon so that federal plans and project schedules relating to the protection of the ground water resource incorporate the state's intent to the fullest extent practicable.

(h) Aid in the development of voluntary programs to reduce the quantity of hazardous or toxic waste generated in order to reduce the risk of ground water contamination from hazardous or toxic waste.

(2) To aid and advise the department in the performance of its functions, the department may establish such advisory and technical committees as the department considers necessary. These committees may be continuing or temporary. The department shall determine the representation, membership, terms and organization of the committees and shall appoint their members. [Formerly 536.125]

**Note:** See note under 468B.150.

**468B.169 Requests for funding, advice or assistance for ground water projects.** (1) Any person, state agency, political subdivision of this state or ground water management committee organized under ORS 468B.179 or 468B.182 may submit to the Department of Environmental Quality a request for funding, advice or assistance for a research or development project related to ground water quality as it relates to Oregon's ground water resource.

(2) The request under subsection (1) of this section shall be filed in the manner, be in the form and contain the information required by the department. The requester may submit the request either to the department or to a ground water management committee organized under ORS 468B.179 OR 468B.182.

(3) The department shall approve only those requests that meet the criteria established by the department under ORS 468B.171. [Formerly 536.129]

**Note:** See note under 468B.150.

**468B.170** [Formerly 468.695; repealed by 1995 c.690 §§25,26]

**468B.171 Awarding grants; purpose.** (1) Of the moneys available to the Department of Environmental Quality to award as grants under ORS 468B.169, not more than one-third shall be awarded for funding of projects directly related to issues pertaining to a ground water management area.

(2) The department may award grants for the following purposes:

(a) Research in areas related to ground water including but not limited to hydrogeology, ground water quality, alternative residential, industrial and agricultural practices;

(b) Demonstration projects related to ground water including but not limited to hydrogeology, ground water quality, alternative residential, industrial and agricultural practices;

(c) Educational programs that help attain the goal set forth in ORS 468B.155; and

(d) Incentives to persons who implement innovative alternative practices that demonstrate increased protection of the ground water resource of Oregon.

(3) Funding priority shall be given to proposals that show promise of preventing or reducing ground water contamination caused by nonpoint source activities.

(4) In awarding grants for research under subsection (2) of this section, the department shall specify that not more than 10 percent of the grant may be used to pay indirect costs. The exact

amount of a grant that may be used by an institution for such costs may be determined by the department.

(5) In accordance with the applicable provisions of ORS 183.310 to 183.550, the Environmental Quality Commission shall adopt by rule guidelines and criteria for awarding grants under this section. [Formerly 536.133]

**Note:** See note under 468B.150.

**468B.175 Declaration of area of ground water concern.** (1) If, as a result of its statewide monitoring and assessment activities under ORS 468B.190, the Department of Environmental Quality confirms the presence in ground water of contaminants suspected to be the result, at least in part, of nonpoint source activities, the department shall declare an area of ground water concern. The declaration shall identify the substances confirmed to be in the ground water and all ground water aquifers that may be affected.

(2) Before declaring an area of ground water concern, the agency making the declaration shall have a laboratory confirm the results that would cause the agency to make the declaration. [Formerly 468.696]

**Note:** See note under 468B.150.

**468B.177 Actions of department after declaration of area of ground water concern.** After a declaration of an area of ground water concern, the Department of Environmental Quality, in consultation with other appropriate state agencies, shall:

- (1) Within 90 days, appoint a ground water management committee in the geographic area overlying the ground water aquifer;
- (2) Focus research and public education activities on the area of ground water concern;
- (3) Provide for necessary monitoring in the area of ground water concern;
- (4) Assist the ground water management committee in developing, in a timely manner, a draft and final local action plan for addressing the issues raised by the declaration of an area of ground water concern; and
- (5) If not developed by the ground water management committee, develop a draft and final local action plan. [Formerly 536.141]

**Note:** See note under 468B.150.

**468B.179 Ground water management committee; appointment; duties.** (1) Upon the request of a local government, or as required under ORS 468B.177 or 468B.182, the Department of Environmental Quality, in consultation with other appropriate state agencies, shall appoint a ground water management committee. The ground water management committee shall be composed of at least seven members representing a balance of interests in the area affected by the declaration.

(2) After a declaration of an area of ground water concern, the ground water management committee shall develop and promote a local action plan for the area of ground water concern. The local action plan shall include but need not be limited to:

- (a) Identification of local residential, industrial and agricultural practices that may be contributing to a deterioration of ground water quality in the area;
- (b) An evaluation of the threat to ground water from the potential nonpoint sources identified;
- (c) Evaluation and recommendations of alternative practices;
- (d) Recommendations regarding demonstration projects needed in the area;
- (e) Recommendations of public education and research specific to that area that would assist in addressing the issues related to the area of ground water concern; and
- (f) Methods of implementing best practicable management practices to improve ground water quality in the area.

(3) The availability of the draft local action plan and announcement of a 30-day public comment period shall be publicized in a newspaper of general circulation in the area designated as an area of ground water concern. Suggestions provided to the ground water management committee during the public comment period shall be considered by the ground water management committee in determining the final action plan.

(4) The ground water management committee may request the department to arrange for technical advice and assistance from appropriate state agencies and higher education institutions.

(5) A ground water management committee preparing or carrying out an action plan in an area of ground water concern or in a ground water management area may apply for a grant under ORS

468B.169 for limited funding for staff or for expenses of the ground water management committee. [Formerly 536.145]

**Note:** See note under 468B.150.

**468B.180 Declaration of ground water management area; standards.** (1) The Department of Environmental Quality shall declare a ground water management area if, as a result of information provided to the department or from its statewide monitoring and assessment activities under ORS 468B.190, the department confirms that, as a result of suspected nonpoint source activities, there is present in the ground water:

(a) Nitrate contaminants at levels greater than 70 percent of the levels established pursuant to ORS 468B.165; or

(b) Any other contaminants at levels greater than 50 percent of the levels established pursuant to ORS 468B.165.

(2) A declaration under subsection (1) of this section shall identify the substances detected in the ground water and all ground water aquifers that may be affected.

(3) Before declaring a ground water management area under subsections (1) and (2) of this section, the agency shall have a second laboratory confirm the results that cause the agency to make the declaration. [Formerly 468.698]

**Note:** See note under 468B.150.

**468B.182 Alternative appointment of ground water management committee.** After the declaration of a ground water management area, the Department of Environmental Quality, in consultation with other appropriate state agencies, shall appoint a ground water management committee for the affected area if a ground water management committee has not already been appointed under ORS 468B.177. If the affected area had previously been designated an area of ground water concern, the same ground water management committee appointed under ORS 468B.177 shall continue to address the ground water issues raised as a result of the declaration of a ground water management area. [Formerly 536.153]

**Note:** See note under 468B.150.

**468B.183 Duties of ground water management committee after declaration of ground water management area.** After the declaration of a ground water management area, a ground water management committee created under ORS 468B.179 shall:

(1) Evaluate those portions of the local action plan, if any, that achieved a reduction in contaminant level;

(2) Advise the state agencies developing an action plan under ORS 468B.184 to 468B.187 regarding local elements of the plan; and

(3) Analyze the local action plan, if any, developed pursuant to ORS 468B.179 to determine why the plan failed to improve or prevent further deterioration of the ground water in the ground water management area designated in the declaration. [Formerly 536.149]

**Note:** See note under 468B.150.

**468B.184 Designation of lead agency for development of action plan; contents of action plan.** (1) After a ground water management area is declared, the Department of Environmental Quality shall designate a lead agency responsible for developing an action plan and request other agencies to assume appropriate responsibilities for preparation of a draft action plan within 90 days after the declaration. The agencies shall develop an action plan to reduce existing contamination and to prevent further contamination of the affected ground water aquifer. The action plan shall include, but need not be limited to:

(a) Identification of practices that may be contributing to the contamination of ground water in the area;

(b) Consideration of all reasonable alternatives for reducing the contamination of the ground water to a level below that level requiring the declaration of a ground water management area;

(c) Recommendations of mandatory actions that, when implemented, will reduce the contamination to a level below that level requiring the declaration of ground water management area;

(d) A proposed time schedule for:

(A) Implementing the lead agency's recommendations;

(B) Achieving estimated reductions in concentrations of the ground water contaminants; and

(C) Public review of the action plan;

(e) Any applicable provisions of a local action plan developed for the area under a declaration of an area of ground water concern; and

(f) Required amendments of affected city or county comprehensive plans and land use regulations in accordance with the schedule and requirements of periodic review set forth in ORS chapter 197 to address the identified ground water protection and management concerns.

(2) If a ground water management area is located on agricultural lands or in an area designated as an exclusive farm use zone under ORS 215.203, the State Department of Agriculture shall be responsible for developing the portion of the action plan that addresses farming practices as defined in ORS 30.930. [Formerly 536.157]

**Note:** See note under 468B.150.

**468B.185** [Formerly 468.699; 1995 c.690 §8; renumbered 468B.190 in 1995]

**468B.186 Comment on plan; final plan.** (1) After completion and distribution of the draft action plan under ORS 468B.184, the lead agency shall provide a 60-day period of public comment on the draft action plan and the manner by which members of the public may review the plan or obtain copies of the plan. A notice of the comment period shall be published in two issues of one or more newspapers having general circulation in the counties in which the designated area of the ground water emergency is located, and in two issues of one or more newspapers having general circulation in the state.

(2) Within 60 days after the close of the public comment period, the lead agency shall complete a final action plan. All suggestions and information provided to the lead agency during the public comment period shall be considered by the lead agency and when appropriate shall be acknowledged in the final action plan. [Formerly 536.161]

**Note:** See note under 468B.150.

**468B.187 Acceptance or rejection of action plan; rules.** (1) The Department of Environmental Quality shall, within 30 days after completion of the final action plan, accept the final action plan or remand the plan to the lead agency for revision in accordance with recommendations of the department and other agencies participating in development of the plan. If the plan is remanded for revision, the lead agency shall return the revised final action plan to the department within 30 days.

(2) Within 120 days after the department accepts the final action plan, each agency of the group that is responsible for implementing all or part of the plan shall adopt rules necessary to carry out the agency's duties under the action plan. If two or more agencies are required to initiate rulemaking proceedings under this section, the agencies shall consult with one another to coordinate the rules. The agencies may consolidate the rulemaking proceedings. [Formerly 536.165]

**Note:** See note under 468B.150.

**468B.188 Repeal of declaration of ground water management area.** (1) If, after implementation of the action plan developed by affected agencies under ORS 468B.184 to 468B.187, the ground water improves so that the levels of contaminants no longer exceed the levels established under ORS 468B.180, the Department of Environmental Quality shall determine whether to repeal the ground water management area declaration and to establish an area of ground water concern.

(2) Before the declaration of a ground water management area is repealed under subsection (1) of this section, the Department of Environmental Quality must find that, according to the best information available, a new or revised local action plan exists that will continue to improve the ground water in the area and that the Department of Environmental Quality finds can be implemented at the local level without the necessity of state enforcement authority.

(3) Before the Department of Environmental Quality terminates any mandatory controls imposed under the action plan created under ORS 468B.184 to 468B.187, the ground water management committee must produce a local action plan that includes provisions necessary to improve ground water in the area and that the department finds can be implemented at the local level without the necessity of state enforcement authority. [Formerly 536.169]

**Note:** See note under 468B.150.

**468B.190 Ground water monitoring and assessment.** (1) In cooperation with the Water Resources Department, the Department of Environmental Quality and the Oregon State University Agricultural Experiment Station shall conduct an ongoing statewide monitoring and assessment program of the quality of the ground water resource of this state. The program shall be designed to

identify:

- (a) Areas of the state that are especially vulnerable to ground water contamination;
- (b) Long-term trends in ground water quality;
- (c) Ambient quality of the ground water resource of Oregon; and
- (d) Any emerging ground water quality problems.

(2) The Oregon State University Agricultural Experiment Station shall forward copies of all information acquired from the statewide monitoring and assessment program conducted under this section to the Department of Environmental Quality for inclusion in the central repository of information about Oregon's ground water resource established pursuant to ORS 468B.167.

[Formerly 468B.185]

#### **ANIMAL WASTE CONTROL**

**Note:** Sections 1 and 2, chapter 248, Oregon Laws 2001, provide:

**Sec. 1.** (1) The State Department of Agriculture and the Department of Environmental Quality are directed to pursue United States Environmental Protection Agency approval of the transfer of the permitting program implemented pursuant to 33 U.S.C. 1342, as it relates to confined animal feeding operations, from the Department of Environmental Quality to the State Department of Agriculture.

(2) The State Department of Agriculture is directed to assume all permitting and enforcement responsibilities for confined animal feeding operations at such time as the United States Environmental Protection Agency approves the transfer.

(3) In order to encourage the assumption of all permitting and enforcement responsibilities for confined animal feeding operations by the State Department of Agriculture, the Department of Environmental Quality and the State Department of Agriculture shall notify the United States Environmental Protection Agency of the completion of the interagency agreements and administrative procedures necessary for the transfer of the permitting program to the State Department of Agriculture.

(4) If the State Department of Agriculture assumes all permitting and enforcement responsibilities for confined animal feeding operations, the State Department of Agriculture shall, to the extent that funds are available for the creation and implementation of an educational program, inform and familiarize operators of confined animal feeding operations with any new administrative rules or related regulatory programs implemented as a result of the assumption. [2001 c.248 §1]

**Sec. 2.** The State Department of Agriculture shall inform the President of the Senate, the Speaker of the House of Representatives and the Legislative Counsel Committee of the assumption of permitting and enforcement responsibilities for confined animal feeding operations pursuant to section 1 of this 2001 Act at the time the United States Environmental Protection Agency approves the transfer. [2001 c.248 §2]

**468B.200 Legislative findings.** The Legislative Assembly declares that it is the policy of the State of Oregon to protect the quality of the waters of this state by preventing animal wastes from discharging into the waters of the state. [Formerly 468.686]

**468B.203 Applicability of 468B.200 to 468B.230.** The provisions of ORS 468B.200 to 468B.230 apply to animal feeding operations regulated under 33 U.S.C. 1342 only to the extent that the operation of the provisions of ORS 468B.200 to 468B.230 is consistent with federal law, regulations or guidelines issued pursuant to the Federal Water Pollution Control Act, P.L. 92-500, as amended. [2001 c.248 §6]

**468B.205 Confined animal feeding operation; definition.** (1) As used in ORS 468B.200 to 468B.230, "confined animal feeding operation" has the meaning given that term in rules adopted by the State Department of Agriculture or the Department of Environmental Quality. The definition must distinguish between various categories of animal feeding operations, including but not limited to those animal feeding operations that are subject to regulation under 33 U.S.C. 1342.

(2) A rule implementing ORS 468B.200 to 468B.230 may not be adopted using the procedures provided in ORS 183.337 for agency adoption of federal rules. [Formerly 468.687; 2001 c.248 §7]

**468B.210 Maximum number of animals per facility; determination.** (1) All permits for confined animal feeding operations issued under ORS 468B.050 shall specify the maximum number of animals that may be housed at the facility.

(2) The maximum number of animals specified in a permit shall be determined for each facility on



the basis of the capacity of the particular confined animal feeding operation to contain, treat, hold and dispose of wastes as necessary to comply with all conditions of the permit.

(3) Any confined animal feeding operation that exceeds by more than 10 percent or 25 animals, whichever is greater, the maximum number of animals specified in its permit shall be considered in violation of the permit and the owner or operator shall be subject to enforcement action under ORS 468.140 or 468.943. [Formerly 468.688; 1993 c.422 §33]

**468B.215 Fees; permit conditions; review.** (1) Any person operating a confined animal feeding operation shall pay a fee established under ORS 561.175.

(2) Except for an animal feeding operation subject to regulation under 33 U.S.C. 1342, a fee shall not be assessed to nor a permit required under ORS 468B.050 (1)(d) of confined animal feeding operations of four months or less duration or that do not have waste water control facilities. A confined animal feeding operation of four months or less duration or that does not have waste water control facilities is subject to all requirements of ORS chapters 468, 468A and 468B if found to be discharging wastes into the waters of the state.

(3) The Department of Environmental Quality or the State Department of Agriculture may impose on the permit required for a confined animal feeding operation only those conditions necessary to ensure that wastes are disposed of in a manner that does not cause pollution of the surface and ground waters of the state.

(4) A permit for a confined animal feeding operation may be revoked or modified by the Department of Environmental Quality or the State Department of Agriculture or may be terminated upon request by the permit holder. An animal feeding operation may be inspected for compliance with water quality laws and regulations by the Department of Environmental Quality or the State Department of Agriculture. [Formerly 468.689; 2001 c.248 §8]

**468B.217 Memorandum of understanding with Department of Agriculture.** (1) On or before January 1, 1994, the Environmental Quality Commission and the State Department of Agriculture shall enter into a memorandum of understanding providing for the State Department of Agriculture to operate a program for the prevention and control of water pollution from a confined animal feeding operation.

(2) Subject to the terms of the memorandum of understanding required by subsection (1) of this section, the State Department of Agriculture:

(a) May perform any function of the Environmental Quality Commission or the Department of Environmental Quality relating to the control and prevention of water pollution from a confined animal feeding operation.

(b) May enter onto and inspect, at any reasonable time, a confined animal feeding operation or appurtenant land for the purpose of investigating a source of water pollution or to ascertain compliance with a statute, rule, standard or permit condition relating to the control or prevention of water pollution from the operation. The State Department of Agriculture shall have access to a pertinent record of a confined animal feeding operation including but not limited to a blueprint, design drawing and specification, maintenance record or log, or an operating rule, procedure or plan. [1993 c.567 §2]

**468B.220 Civil penalty for violation of permit requirement.** Any owner or operator of a confined animal feeding operation who has not applied for or does not have a permit required by ORS 468B.050 shall be assessed a civil penalty of \$500 in addition to other penalties that the Director of the Department of Environmental Quality may assess. [Formerly 468.690]

**468B.222** [1995 s.s. c.3 §37a; repealed by 1996 c.5 §3 (468B.223 enacted in lieu of 468B.222)]

**468B.223** [1996 c.5 §4 (enacted in lieu of 468B.222); repealed by 2001 c.248 §14]

**468B.224** [1995 s.s. c.3 §37b; repealed by 1996 c.5 §5 (468B.225 enacted in lieu of 468B.224)]

**468B.225 Prerequisite for investigation; written complaint; security deposit.** (1) Prior to conducting an investigation of an animal feeding operation under ORS 468B.217 on the basis of a complaint, the State Department of Agriculture shall:

(a)(A) Require the person making the complaint to specify the complaint in writing; or

(B) Make a detailed written record of the complaint; and

(b) Determine which provision of ORS chapter 468 or 468B, which rule adopted under ORS chapter 468 or 468B or which permit issued under ORS chapter 468 or 468B the operator of the animal feeding operation may have violated.

(2) If, upon investigation under ORS 468B.217 on the basis of a complaint received under subsection (1) of this section, the State Department of Agriculture determines that an animal feeding operation has not violated a provision of ORS chapter 468 or 468B, a rule adopted under ORS chapter 468 or 468B or the conditions of a permit issued under ORS chapter 468 or 468B, and the department has reason to believe that the complaint was groundless and made for the purpose of harassing the operator, the department may refuse to consider future complaints made by the person. [1996 c.5 §6 (enacted in lieu of 468B.224); 2001 c.248 §9]

**468B.226** [1995 s.s. c.3 §37c; repealed by 1996 c.5 §7 (468B.227 enacted in lieu of 468B.226)]

**468B.227** [1996 c.5 §8 (enacted in lieu of 468B.226); repealed by 2001 c.248 §14]

**468B.230 Department of Agriculture civil penalty authority.** (1) In addition to any liability or penalty provided by law, the State Department of Agriculture may impose a civil penalty on the owner or operator of a confined animal feeding operation for failure to comply with a provision of ORS chapter 468 or 468B or any rule adopted under, or a permit issued under ORS chapter 468 or 468B, relating to the control and prevention of water pollution from a confined animal feeding operation. For the purposes of this section, each day a violation continues after the period of time established for compliance shall be considered a separate violation unless the State Department of Agriculture finds that a different period of time is more appropriate to describe a specific violation event.

(2) Except for an animal feeding operation subject to regulation under 33 U.S.C. 1342, the State Department of Agriculture may not impose a civil penalty under subsection (1) of this section for a first violation by an owner or operator of a confined animal feeding operation:

(a) That is more than \$2,500; and

(b) Unless the State Department of Agriculture notifies the violator that the violation must be eliminated no later than 30 business days from the date the violator receives the notice. If the violation requires more than 30 days to correct, the State Department of Agriculture may allow such time as is necessary to correct the violation. In all cases, the legal owner of the property shall also be notified, prior to the assessment of any civil penalty.

(3) The State Department of Agriculture may not impose a civil penalty under subsection (1) of this section that exceeds \$10,000 for a subsequent violation.

(4) In imposing a civil penalty under this section, the State Department of Agriculture may consider:

(a) The past history of the owner or operator in taking all feasible steps or procedures necessary and appropriate to correct a violation.

(b) A past violation of a rule or statute relating to a water quality plan.

(c) The gravity and magnitude of the violation.

(d) Whether the violation was a sole event, repeated or continuous.

(e) Whether the cause of the violation was as a result of an unavoidable accident, negligence or an intentional act.

(f) Whether the owner or operator cooperated in an effort to correct the violation.

(g) The extent to which the violation threatens the public health and safety.

(5) No notice of violation or period for compliance shall be required under subsection (2) of this section if:

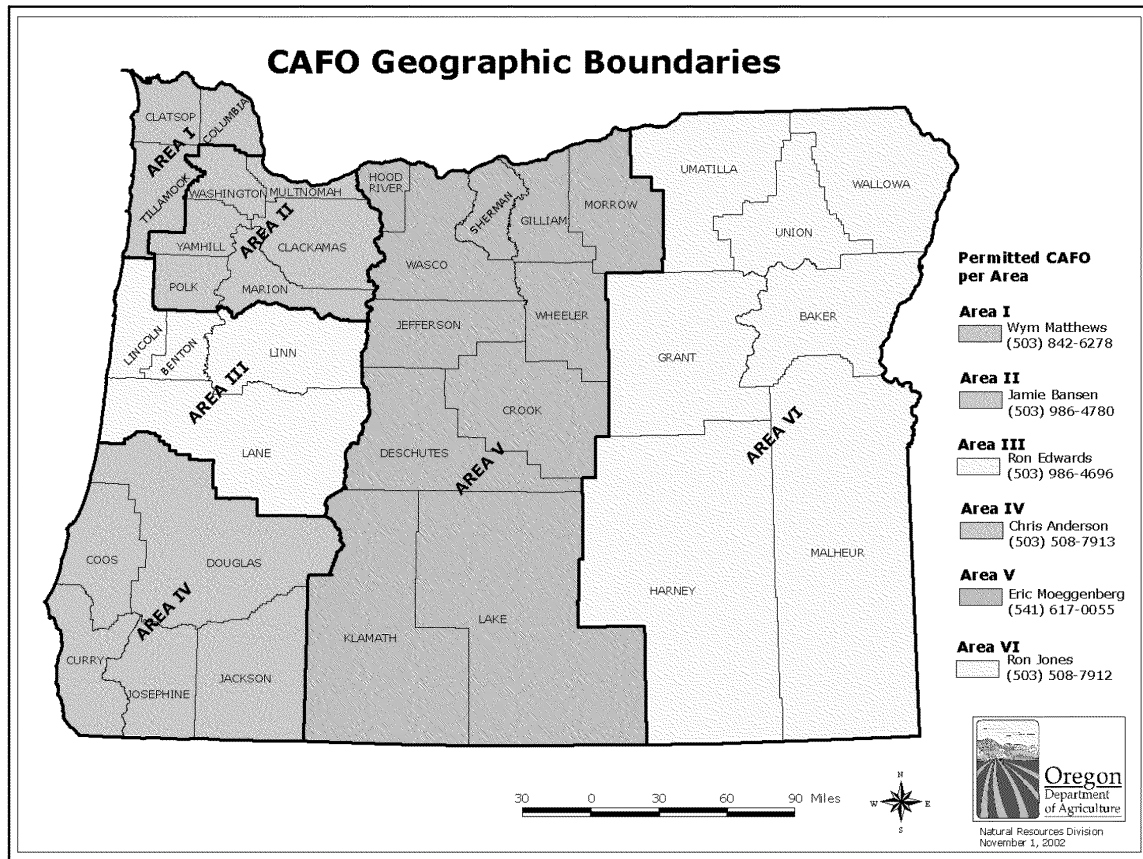
(a) The violation is intentional; or

(b) The owner or operator has received a previous notice of the same or similar violation.

(6) A civil penalty collected by the State Department of Agriculture under this section shall be deposited into a special subaccount in the Department of Agriculture Service Fund. Moneys in the subaccount are continuously appropriated to the department to be used for educational programs on animal waste management and to carry out animal waste management demonstration or research projects.

(7) Any civil penalty imposed under this section shall be reduced by the amount of any civil penalty imposed by the Environmental Quality Commission, the Department of Environmental Quality or the United States Environmental Protection Agency, if the latter penalties are imposed on the same person and are based on the same violation. [1993 c.567 §3; 2001 c.248 §10]

## Attachment 6



## Attachment 7

A Pollution  
December 3



1-

2014-919500014222



# Attachment 8

## MEMORANDUM OF AGREEMENT

Between

The Oregon Department of Agriculture

and

The Oregon Department of Environmental Quality

concerning

### Water Quality Limited Waterbodies (303(d)), Total Maximum Daily Loads (TMDLs) and Agricultural Water Quality Management Area Plans (AWQMAPs)

WHEREAS the Oregon Department of Environmental Quality (hereinafter referred to as DEQ) has responsibilities in relation to water quality under the federal Clean Water Act as enshrined in state statute and administrative rules; and

WHEREAS the Oregon Department of Agriculture (hereinafter referred to as ODA) has responsibility for regulating farming practices for water quality improvement under ORS 568-900-933 and ORS 561.191; and

WHEREAS the two agencies have responsibilities under the Oregon Plan to develop TMDLs and Agricultural Water Quality Management Area Plans (AWQMAPs); and

WHEREAS the two agencies wish to pursue a collaborative relationship to define the process for improving water quality; and

WHEREAS the two agencies intend to address all parameters exceeding water quality standards and all sources in a geographic area; and

WHEREAS the two agencies will strive to work in as large a hydrologic unit as practicable.

NOW THEREFORE, the two agencies desirous of facilitating a cooperative working relationship enter into the following agreement:

#### I. Water Quality Limited 303(d) List

Pursuant to section 303(d) of the Clean Water Act, DEQ is responsible for compiling a list of waters of the state not meeting water quality standards. ODA shall review the draft list and provide input to DEQ on listing, prior to the release of the draft list for public comment.

DEQ has responsibility for prioritizing waterbodies on the 303(d) list. However, DEQ will involve ODA in the prioritization process. DEQ will develop prioritization criteria, and then discuss these with ODA. The actual prioritization of waterbodies affecting the scheduling of AWQMAPs will be mutually agreed by DEQ and ODA.

#### II. 303(d) Delisting

DEQ will propose removal of waterbodies from the 303(d) list when any of the following circumstances occur:

1. waterbodies come into compliance with standards, as demonstrated by applicable data;
2. water quality standards are revised which result in a waterbody coming into compliance;
3. a use attainability analysis is completed in which a beneficial use is removed, and the applicable standard which led to the listing is no longer relevant;
4. a TMDL is approved by EPA for that waterbody;
5. a water quality management plan is developed which will ensure that waters meet standards within two years, i.e. within the listing cycle.

### III. TMDL Development

The following shall constitute the elements that make up a TMDL:

#### A. TMDL Advisory Committee

DEQ will form a TMDL advisory committee with broad representation from the sub-basin to provide input on TMDL development and implementation. To the maximum extent possible this advisory committee will be based on existing watershed councils as appropriately augmented, including representation from the AWQMAP committee. DEQ shall advise local ODA staff of advisory committee meetings and shall encourage them to attend and participate in these meetings.

#### B. Data/Information Gathering

DEQ, in conjunction with the advisory committee shall gather and analyze information and data sufficient to generate the TMDL.

#### C. TMDL Elements

The elements of an approvable TMDL are:

1. a determination of the loading capacity of the receiving waterbody, i.e. the quantity of pollutants that can be assimilated and have water quality standards met;
2. waste load allocations for point source dischargers. These will be incorporated into NPDES permits at the time of renewal or reissue;
3. load allocations for nonpoint sources. These shall be aggregate allocations to each sector, as applicable, including but not limited to; agriculture, forestry and urban within the geographic area of the TMDL;
4. an allocation for background, or natural levels of pollutants;
5. a margin of safety based on the rigor of the available data and modeling.

#### D. Development of TMDL Implementation Plans

Load allocations for agricultural nonpoint sources will be provided by DEQ to ODA which will then begin developing a AWQMAP, or modifying an existing AWQMAP, to address the load allocation. DEQ will seek implementation by point sources through NPDES permits and urban nonpoint sources through mechanisms such as stormwater permits. Implementation plans for each sector will be consolidated by DEQ for submission to EPA. DEQ and ODA will communicate with each other on plan components.

#### E. Public Participation

DEQ is responsible for ensuring that draft TMDLs will be released for public comment prior to submission to EPA for approval. DEQ will consult with ODA on comments received, particularly those related to the

agricultural portion of the TMDL. DEQ will not unilaterally respond to public comments related to agriculture. Responses related to agriculture shall be determined collaboratively between ODA and DEQ.

#### F. TMDL Submission

DEQ will compile and submit the various components of a TMDL to EPA for approval. DEQ will not forward for approval packages that it does not believe will meet EPA's requirements. DEQ will keep a record of approved TMDLs.

### IV. Agricultural Water Quality Management Area Plans (AWQMAPs) Development

#### A. Advisory Committees

ODA will form a local advisory committee to assist in the development of an AWQMAP. ODA will ensure that its advisory committee maintains links with DEQ's TMDL advisory committee, where a TMDL advisory committee is in place. ODA shall ensure that local DEQ staff are aware of meetings of the AWQMAP advisory committee and are afforded the opportunity to attend and to participate in meetings.

#### B. Determination of AWQMAP Boundary

ODA, in conjunction with the advisory committee shall determine the boundary within which a AWQMAP shall apply. The map attached at Attachment A depicting Oregon's 91 sub-basins shall be used in determining boundaries. Generally, DEQ will be working at the sub-basin level. ODA will be working at this level, or a broader geographical area, such as the basin level.

#### C. Gathering Data/Information

ODA, in conjunction with the advisory committee, will gather relevant data and information from other committees or councils in the basin from within the defined area to develop the plan. DEQ commits to sharing water quality data with ODA.

#### D. AWQMAP Elements

An AWQMAP shall consist of the following elements:

1. problem identification;
2. goal statement of water quality objectives. The overriding objective here is attainment of water quality standards;
3. measures needed to attain goals;
4. implementation schedules;
5. guidelines for public participation process, including state and local government roles and responsibilities;
6. compliance establishment and reviews;
7. monitoring of plan for effectiveness;
8. plan review schedule and revision process if conditions warrant;
9. enforcement process and strategy.

#### E. DEQ Input

During AWQMAP development, ODA will seek input from DEQ on the sufficiency of the plan to meet water quality standards, prior to going through the rulemaking process. In all cases, ODA will invite DEQ regional staff participation on a Technical Advisory Committee to the ODA's AWQMAP Local Advisory Committee.

In areas where ODA and DEQ are concurrently active, ODA will also coordinate with DEQ's TMDL Advisory Committee. As feasible, ODA will include members of DEQ's TMDL advisory committee on its AWQMAP Local Advisory Committees.

F. ODA ahead of DEQ

In those circumstances where ODA is present in an area before DEQ, ODA will develop an AWQMAP as detailed above in this agreement. ODA will develop the plan with regard to the 303(d) listings and parameters exceeding standards in the area. At the time that DEQ develops load allocations for agricultural nonpoint sources or groups of sources, ODA will evaluate the AWQMAP previously developed plan to assure attainment of DEQ's load allocations for agriculture.

G. Public Participation

ODA is responsible for ensuring that draft Agricultural Water Quality Management Area Plans will be released for public comment prior to submission to DEQ for incorporation into TMDLs. ODA shall consult with DEQ on comments received, particularly those related to the TMDL. ODA shall not unilaterally respond to these public comments related to TMDLs. Responses will be determined collaboratively between ODA and DEQ.

All Agricultural Water Quality Management Area Plans will be codified in administrative rules. Public participation will be invited as a part of the rulemaking process.

H. DEQ's Role

ODA will submit the final AWQMAP to DEQ. DEQ will incorporate it into the TMDL submission to EPA.

I. ODA AWQMAP Implementation

Under AWQMAPs, it is ODA's intent to work with landowners on water quality issues in a proactive, voluntary manner by providing information and technical assistance for implementation of water quality protective measures.

All AWQMAPs will also contain regulatory backstops which outline measures deemed necessary by the department, and which are codified in administrative rules. Landowners found to be out of compliance will be notified and directed to take actions necessary to bring the condition of the subject lands into compliance with the area plan its associated rules. Such enforcement actions by ODA shall be pursued according to OARs 603-90-060 through 120.

V. Federal Lands

ODA and DEQ agree that DEQ shall be the primary point of contact in the state for federal agencies wishing to develop WQMPs/TMDLs, and that furthermore DEQ's nonpoint source TMDL guidance shall form the basis for the development of such plans. DEQ will, however, involve ODA in the development of federal plans where there are agricultural land management issues, public participation and submission of federal plans to EPA. ODA agrees to provide timely feedback to DEQ and the federal agencies so as not to delay development and submission of such plans.

VI. Coordination Meetings

ODA and DEQ commit to meeting quarterly to:

1. coordinate work;
2. share information; and
3. resolve issues.



VII. Amendment and Termination

This agreement remains in force until terminated. Termination shall occur after sixty days written notice from either party. No amendments may be made to this agreement without the express written agreement of both parties. Such agreement shall be signed by the Directors of each agency.

For the State of Oregon  
Department of Agriculture

For the State of Oregon  
Department of Environmental Quality

-----  
Bruce Andrews  
Director            /        /1998

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Langdon Marsh  
Director                        /        /1998

## **Attachment 9**

### **Example of Integrated Pest Management Promotion Through Coos Soil and Water Conservation District Newsletter**

# Attachment 10

The Oregon Administrative Rules contain OARs filed through March 15, 2002

## WATER RESOURCES DEPARTMENT

### DIVISION 500 BASIN PROGRAMS

#### 690-500-0010

##### **Basin Programs Preamble**

(1) The Water Resources Commission is responsible for the establishment of policy and procedures for the use and control of the state's water resources. In executing this responsibility, the Commission develops, adopts and periodically modifies programs for the state's major drainage basins.

(2) Basin programs are administrative rules which establish water management policies and objectives and which govern the appropriation and use of the surface and ground water within each of the respective basins. The rules classify surface and ground waters according to the uses which are permitted, may establish preferences among uses, may withdraw surface and groundwaters from further appropriation, may reserve waters for specified future uses, and may establish minimum perennial streamflows. These rules are in addition to rules with statewide applicability which govern the allocation and use of water.

(3) The Commission has adopted programs for the following basins:

- (a) North Coast Basin (Division 501);
- (b) Willamette Basin (Division 502);
- (c) Sandy Basin (Division 503);
- (d) Hood Basin (Division 504);
- (e) Deschutes Basin (Division 505);
- (f) John Day Basin (Division 506);
- (g) Umatilla Basin (Division 507);
- (h) Grand Ronde Basin (Division 508);
- (i) Powder Basin (Division 509);
- (j) Malheur -- Owyhee Basins (Division 510);
- (k) Goose and Summer Lakes Basin (Division 513);
- (l) Rogue Basin (Division 515);
- (m) Umpqua Basin (Division 516);
- (n) South Coast Basin (Division 517);
- (o) Mid Coast Basin (Division 518);
- (p) Columbia River (Division 519);
- (q) Middle Snake River Basin (Division 520).

(4) Although the Commission has not adopted a comprehensive basin program for the waters of the Malheur Lake Basin, minimum perennial stream-flows have been adopted for specified streams in the basin. These minimum perennial streamflows are in Division 512. Allocation and use of the waters of the basin also are subject to administrative rules with statewide applicability.

(5) The Commission has not adopted a comprehensive basin program for the waters of the Klamath Basin. Allocation and use of the waters of the basin are subject to administrative rules with statewide applicability and to the provisions of the Klamath River Basin Compact (ORS 542.620).

Stat. Auth.: ORS 536.027 & ORS 536.300

Stats. Implemented:

Hist.: WRD 16-1988, f. & cert. ef. 9-23-88, Renumbered from 690-080-0000

#### 690-500-0020

##### **Definitions**

Unless otherwise defined in a basin program, the following definitions apply in OAR Chapter 690, Divisions 501, 504 - 512, and 515 - 520 to any classification adopted prior to January 1, 1993:

(1) "Domestic Use" means the use of water for domestic water use, group domestic water use, commercial water use of less than 5,000 gallons per day, or human consumption as defined in OAR 690-011-0010.

(2) "Fish Culture or Fish Life Use" means the use of water for aquatic life water uses as defined in OAR

690-011-0010 and public uses related to fish culture or fish life water uses as defined in OAR 690-077-0010.

(3) "Industrial Use" means the use of water for commercial water use or industrial water use as defined in OAR 690-011-0010.

(4) "Irrigation Use" means the use of water for agricultural water use, cranberry use, irrigation, nursery operations use, or temperature control as defined in OAR 690-011-0010.

(5) "Livestock Use" means the use of water for stockwater use as defined in OAR 690-011-0010.

(6) "Mining Use" means the use of water for mining water use or placer mining as defined in OAR 690-011-0010.

(7) "Municipal Use" means the use of water for commercial water use, municipal water uses, or quasi-municipal water uses as defined in OAR 690-011-0010.

(8) "Pollution Abatement Use" means the use of water for pollution abatement or prevention water use as defined in OAR 690-011-0010 and public uses related to pollution abatement as defined in OAR 690-077-0010.

(9) "Power or Power Development Use" means the use of water for power development water use as defined in OAR 690-011-0010.

(10) "Recreation Use" means the use of water for recreation water use as defined in OAR 690-011-0010 and public uses related to recreation uses as defined in OAR 690-077-0010.

(11) "Wildlife Use" means the use of water for wildlife use as defined in OAR 690-011-0010 and public uses related to wildlife uses as defined in OAR 690-077-0010.

Stat. Auth.: ORS 536.220 - ORS 536.350

Stats. Implemented:

Hist.: WRD 5-1993, f. & cert. ef. 10-7-93

## **WATER RESOURCES DEPARTMENT**

### **DIVISION 501**

#### **NORTH COAST BASIN PROGRAM**

[NOTE: The North Coast Basin is delineated on the agency Map 1.6, dated 1972.]

#### **690-501-0005**

##### **Classifications**

(1) The maximum economic development of this state, the attainment of the highest and best use of the waters of the North Coast Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses; and the waters of the North Coast Basin are hereby so classified with the following exceptions:

(a) The waters of the natural lakes of the North Coast Basin are classified only for utilization of water for domestic, livestock, power development not to exceed 7-1/2 theoretical horsepower, and in-lake uses for recreation, wildlife, and fish life purposes;

(b) The attainment of the highest and best use of the waters of Clatskanie and Klaskanine Rivers and their tributaries, Lewis and Clark River and Tillasqua Creek (Big Creek), has been determined through legislative withdrawal by ORS 538.251 to be for the protection of fish life. ORS 538.260 states that ORS 538.251 shall not affect any existing rights or prevent appropriation for domestic, stock, municipal, fish culture, esthetic, recreational, or public park purposes. No classifications within this program are intended to contradict the intent of this statute;

(c) The waters of the Columbia River creating a tidal influence in the mouths of the tributaries to the Columbia River within the Columbia Subbasin are classified only for utilization of water for domestic, livestock, municipal, irrigation, industrial, recreation, wildlife, and fish life purposes;

(d) The waters of all streams tributary to Sand Lake are classified only for utilization for domestic, livestock, use in dairies, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area, power development and instream use for recreation, fish life and wildlife purposes;

(e) The waters of Jetty Creek and its tributaries are classified only for utilization of water for human consumption, livestock consumption, power development and instream uses for recreation, wildlife and

fish life purposes. In addition, up to one cubic foot per second of the waters of Jetty Creek is reserved for municipal use;

(f) The waters of Heitmiller Creek are classified only for utilization of water for human consumption, livestock consumption, and instream uses for recreation, wildlife and fish life purposes;

(g) The waters of the following streams are classified only for utilization of water for human consumption, livestock consumption, power development and instream uses for recreation, wildlife, and fish life purposes:

(A) Tillamook Subbasin:

(i) All streams tributary to Daley Lake;

(ii) All streams tributary to Netarts Bay;

(iii) Coleman Creek and its tributaries;

(iv) Vaughn Creek and its tributaries;

(v) Douhty Creek and its tributaries;

(vi) Patterson Creek and its tributaries;

(vii) Larson Creek and its tributaries;

(viii) All streams tributary to Lake Lytle.

(B) Nehalem Subbasin:

(i) Salmonberry River and its tributaries;

(ii) Rock Creek and its tributaries.

(C) Columbia Subbasin:

(i) Short Sand Creek and its tributaries;

(ii) Arch Cape Creek and its tributaries;

(iii) Cullaby Creek and its tributaries;

(iv) John Day River and its tributaries;

(v) Gnat Creek and its tributaries;

(vi) All tributaries to Westport Slough, except Plympton Creek. In addition to uses in subsection (g) of this section, permits may also be used to collect and divert polluted industrial site runoff, before entering OK Creek, for pollution abatement purposes. This use shall be allowed only on the condition that all applicable requirements of other agencies are met;

(vii) Tide Creek and its tributaries, except that water from the main stem Tide Creek from the falls near river mile 3 to the mouth may be used for gravel washing provided that such use shall not diminish the flow in Tide Creek below 2.5 cfs;

(viii) Goble Creek and its tributaries, except that surface water legally stored and released from storage may be used for any beneficial purpose. Storage shall be limited to the period December 1 to February 28 of each year.

(2) Applications for the use of the waters of the North Coast Basin shall not be accepted by any state agency for any purposes contrary to the classifications herein specified, and the granting of applications for such other purposes is declared to be prejudicial to the public interest, and the granting of applications for such other uses would be contrary to this water use program.

(3) Structures or works for utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with the applicable provisions of ORS 536.310; and any such structures or works, which do not give cognizance to the multiple-purpose concept, are further declared to be prejudicial to the public interest.

Stat. Auth.: ORS 536.300, ORS 536.340 & ORS 537

Hist.: WRB 21, f. 11-8-62; WRB 27, f. 5-11-64; WRB 51, f. 5-14-73; WRD 5-1978, f. & cert. ef. 6-8-78; WRD 5-1981, f. & cert. ef. 6-19-81; WRD 5-1989, f. & cert. ef. 9-14-89; WRD 3-1991, f. & cert. ef. 3-14-91, Renumbered from 690-080-0010

**690-501-0010**

### **Minimum Perennial Streamflows**

For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life, no appropriations of water except for human consumption, livestock consumption, and waters legally released from storage shall be made or granted by any state agency or public corporation of the state for the waters of the following streams and their tributaries for flows below the amounts specified in **Table 1**.

[ED. NOTE: The Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

*Stat. Auth.: ORS 536.300, ORS 536.340 & ORS 537*

*Stats. Implemented:*

*Hist.: WRB 21, f. 11-8-62; WRB 27, f. 5-11-64; WRB 51, f. 5-14-73; WRD 5-1978, f. & cert. ef. 6-8-78; WRD 5-1981, f. & cert. ef. 6-19-81; WRD 5-1989, f. & cert. ef. 9-14-89; WRD 3-1991, f. & cert. ef. 3-14-91, Renumbered from 690-080-0010*

#### **690-501-0020**

##### **Storage**

*All applications for appropriation of water for storage in structures impounding more than 3,000,000 gallons of water shall be reviewed by the Water Resources Commission prior to approval. During the review the Water Resources Commission may establish additional minimum flows on the natural flow of the stream to support aquatic life or minimize pollution.*

*Stat. Auth.: ORS 536.300, ORS 536.340 & ORS 537*

*Stats. Implemented:*

*Hist.: WRB 21, f. 11-8-62; WRB 27, f. 5-11-64; WRB 51, f. 5-14-73; WRD 5-1978, f. & cert. ef. 6-8-78; WRD 5-1981, f. & cert. ef. 6-19-81; WRD 5-1989, f. & cert. ef. 9-14-89; WRD 3-1991, f. & cert. ef. 3-14-91, Renumbered from 690-080-0010*

#### **690-501-0030**

##### **Out-of-Basin Appropriations**

*To support present and proposed North Coast Basin water resource development no out-of-basin appropriation of the waters of the North Coast Basin shall be made or granted by any state agency or public corporation of the state without the prior approval of, and following a public hearing by, the Water Resources Commission.*

*Stat. Auth.: ORS 536.300, ORS 536.340 & ORS 537*

*Stats. Implemented:*

*Hist.: WRB 21, f. 11-8-62; WRB 27, f. 5-11-64; WRB 51, f. 5-14-73; WRD 5-1978, f. & cert. ef. 6-8-78; WRD 5-1981, f. & cert. ef. 6-19-81; WRD 5-1989, f. & cert. ef. 9-14-89; WRD 3-1991, f. & cert. ef. 3-14-91, Renumbered from 690-080-0010*

#### **690-501-0040**

##### **Water Quality**

*Rights to use of water grant by any state agency in accordance with this water use program shall be issued only on the condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.*

*Stat. Auth.: ORS 536.300, ORS 536.340 & ORS 537*

*Stats. Implemented:*

*Hist.: WRB 21, f. 11-8-62; WRB 27, f. 5-11-64; WRB 51, f. 5-14-73; WRD 5-1978, f. & cert. ef. 6-8-78; WRD 5-1981, f. & cert. ef. 6-19-81; WRD 5-1989, f. & cert. ef. 9-14-89; WRD 3-1991, f. & cert. ef. 3-14-91, Renumbered from 690-080-0010*

**The Oregon Administrative Rules contain OARs filed through March 15, 2002**

## **WATER RESOURCES DEPARTMENT**

### **DIVISION 515**

#### **ROGUE BASIN PROGRAM**

#### **690-515-0000**

##### **Upper Rogue Basin**

*(1) Classifications:*

*(a) The maximum economic development of this state, the attainment of the highest and best use of the waters of the upper Rogue River Basin and the attainment of an integrated, coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, agricultural use, power development, industrial, mining, recreation, wildlife and fish life uses and the waters of the upper Rogue River Basin are hereby so classified with the following exceptions:*

*(A) Those waters on which development is further restricted by ORS 538.220, 538.270, 538.430 and 542.210;*

*(B) The waters of Indian Creek, Evergreen Creek, Reese Creek, Trail Creek and Elk Creek and tributaries*

are classified only for domestic, livestock and instream use for recreation, fish life and wildlife except for the use of stored water. Water stored between November 1 and March 31 may be used at any time for purposes specified in subsection (a) of this section;

(C) To protect, maintain and perpetuate the resident fish habitat, the recreational value, and the cultural resources of the Upper Rogue Basin, the waters of the following streams and natural lakes shall not be diverted, interrupted or appropriated for power development purposes:

(i) All natural lakes in the Upper Rogue Basin;

(ii) The Rogue River from the origin near the intersection with the south line of Section 4, Township 29 South, Range 5 East, downstream to USGS stream gage 14328000 (Township 32 South, Range 3 East, Section 19) excluding existing projects;

(iii) Union Creek and tributaries;

(iv) Abbott Creek and tributaries.

(b) Applications for the use of the waters of the Upper Rogue River Basin shall not be accepted by any state agency for any other purpose than those specified in subsection (a) of this section and the granting of applications for such other purposes is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated, coordinated program for the use and control of the water resources of the state;

(c) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Minimum Perennial Streamflows:

(a) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water shall be made or granted by any state agency or public corporation of the state for the waters of the Rogue River or tributaries above river mile 164 when the combined flow measured at stream gages 14330000, Rogue River below Prospect (Township 33 South, Range 3 East, Section 6), and 14334700, South Fork Rogue River, South of Prospect (Township 33 South, Range 3 East, Section 7) is below 835 cubic feet per second except that this limitations shall not apply to:

(A) Water legally stored or legally released from storage;

(B) Domestic and livestock uses. Domestic use does not include irrigation of lawns and gardens;

(C) Appropriation of water for power development at or near gage 14330000 provided that alternative provisions for flow measurements are included in any permit or license issued for the project.

(b)(A) To support aquatic life and minimize pollution, in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriations of water shall be made or granted by any state agency or public corporation of the state for the waters of Reese Creek and tributaries when flows are below the specified levels in

**Table 1, Section B.** This limitation shall not apply to:

(i) Domestic and livestock uses. Domestic use does not include irrigation of lawns and gardens;

(ii) Water legally stored or released from storage, subject to section (3) of this rule.

(B) Attainment of the specified flow levels during some portions of the year will require development of water storage or implementation of other measures to augment flows.

(3) Storage:

(a) All applications for appropriations of water for storage in structures impounding more than 3,000,000 gallons of water shall be reviewed by the Water Policy Review Board prior to approval. During the review, the Water Policy Review Board may establish additional minimum flows on the natural flow of the stream to support aquatic life or minimize pollution. Storage projects consistent with the purposes of minimum perennial streamflows shall be encouraged;

(b) Potential reservoir sites should be identified in the comprehensive planning process for possible future development or until alternative methods of meeting water needs have been developed. Immediate consideration should be given to the following site: Elk Creek (SW 1/4 SW 1/4, Section 20, Township 33 South, Range 1 East).

(4) Water Quality: Rights to use of water for industrial, power development or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not significantly interfere with recreation, fish life or other beneficial uses of water.

(5) Existing Rights: This program does not modify, set aside or alter any existing right to use water or the

priority of such use established under existing Laws.

**NOTE:** The Upper Rogue Basin includes all of the drainage area of the Rogue River and its tributaries above river mile 133 at the south line of Section 31, Township 35 South, Range 1 West, Willamette Meridian.

[ED NOTE: The Table referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert., ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66); Administrative Renumbering 1-1993, Renumbered from 690-080-0150

**690-515-0010**

### **Little Butte Creek Basin**

#### **(1) Classifications:**

(a) The maximum economic development of this state and the attainment of the highest and best use of waters of the Little Butte Creek Basin and the attainment of an integrated and coordinated program for the benefit of the state will be furthered through utilization of the aforementioned waters only for domestic, livestock, irrigation, agricultural use, power development, recreation, wildlife, and fish life purposes and the waters of the Little Butte Creek Basin are hereby so classified except for water administratively withdrawn from appropriation;

(b) Applications for the use of the waters of the Little Butte Creek Basin shall not be accepted by any state agency for any purpose other than those specified in subsection (a) of this section and the granting of such applications for such other purposes is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated, coordinated program for the use and control of the water resources of the state;

(c) Structures or works of the utilization of the waters in accordance with the aforementioned classifications, are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Minimum Perennial Streamflows: For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water except for domestic or livestock use shall be made or granted by any state agency or public corporation of the state, except that this limitation shall not apply to water legally stored or legally released from storage subject to the provisions of Section D for the waters of the streams listed in **Table 2** when flows are below the specified levels. Domestic use does not include irrigation of lawns and gardens.

#### **(3) Storage:**

(a) Potential Reservoir sites should be identified in the comprehensive land use planning process for possible future development or until alternative methods of meeting water needs have been developed.

Immediate consideration should be given to the following sites:

(A) Lake Creek (E 1/2, Section 30, Township 36 South, Range 2 East);

(B) South Fork Little Butte Creek (SE 1/4 SE 1/4, Section 29, Township 36 South, Range 2 East).

(b) All applications for appropriation of water for storage in structures impounding more than 3,000,000 gallons of water shall be reviewed by the Water Policy Review Board prior to approval. During the review the Water Policy Review Board may establish additional minimum flows on the natural flow of the stream to support aquatic life or minimize pollution. Storage projects consistent with the purposes of minimum perennial streamflows shall be encouraged.

(4) Existing Rights: This program does not modify, set aside or alter any existing right to use water or the priority of such use established under existing laws.

[ED. NOTE: The Table referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:



*Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert., ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66); Administrative Renumbering 1-1993, Renumbered from 690-080-0150*

**690-515-0020**

**Bear Creek Basin**

**(1) Classifications:**

(a) No applications for appropriation of water shall be accepted or issued by any state agency except appropriations for beneficial uses involving water legally stored in excess of the amount necessary for existing rights;

(b) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) **Water Quality:** Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not significantly interfere with recreational, fish life, or other beneficial uses of water.

(3) **Power Development:** Rights to use of water for power development purposes granted by any state agency shall be issued only on the condition, as demonstrated by the applicant, that any dams, diversions, generating facility, or return flows shall not significantly interfere with recreational, fish life or other beneficial uses of water.

**(4) Storage:**

(a) Potential reservoir sites should be identified in the comprehensive land use planning process for possible future development or until alternative methods of meeting water needs have been developed. Immediate consideration should be given to the following sites:

(A) Walker Creek, NE 1/4 Section 12, Township 39 South, Range 1 East, Willamette Meridian;

(B) West Fork Ashland Creek (Winburn site), NE 1/4 Section 32, Township 39 South, Range 1 East, Willamette Meridian;

(C) West Fork Ashland Creek (Ranger site), SW 1/4 Section 28, Township 39 South, Range 1 East, Willamette Meridian.

(b) All applications for appropriation of water for storage in structures impounding more than 3,000,000 gallons of water shall be reviewed by the Water Policy Review Board prior to approval. During the review the Water Policy Review Board may establish additional minimum flows on the natural flow of the stream to support aquatic life or minimize pollution. Storage projects consistent with the purposes of minimum perennial streamflows shall be encouraged.

(5) **Existing Rights:** This program does not modify, set aside or alter any existing right to use water or the priority of such use established under existing laws.

**Stat. Auth.: ORS 536 & ORS 537**

**Stats. Implemented:**

*Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert., ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66); Administrative Renumbering 1-1993, Renumbered from 690-080-0150*

**690-515-0030**

**Applegate River Basin**

**(1) Classifications:**

(a) The maximum economic development of this state and the attainment of the highest and best use of the waters of the Applegate River Basin and the attainment of an integrated and coordinated program for the benefit of the state will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, agricultural use, power development, industrial, mining, recreation, wildlife, and fish life purposes and the waters of the Applegate River Basin are hereby so classified with the

following exceptions:

(A) The waters of the following streams and tributaries are classified only for domestic, livestock, power development except for those streams listed in paragraph (C) of this subsection, irrigation of noncommercial gardens not to exceed 1/2 acre in area, and instream use for recreation, fish life and wildlife except for the use of stored water. Water stored between November 1 and March 31 of any year may be used for any purpose specified in subsection (a) of this section:

- (i) Palmer Creek;
- (ii) Beaver Creek;
- (iii) Little Applegate River;
- (iv) Forest Creek;
- (v) Williams Creek;
- (vi) Cheney Creek;
- (vii) Slate Creek.

(B) The waters of Thompson Creek and tributaries are classified only for domestic, livestock and instream use for recreation, fish life and wildlife except for the use of stored water. Water stored between November 1 and March 31 may be used at any time for purposes specified in subsection (a) of this section;

(C) To protect, maintain and perpetuate anadromous fish habitat and propagation, the waters of the following stream reaches shall not be diverted, interrupted or appropriated for hydropower development purposes:

- (i) Palmer Creek from the confluence with Bailey Gulch downstream to the mouth;
- (ii) Beaver Creek from the intersection with the east line of Section 11, Township 40 South, Range 3 West, Willamette Meridian, to the mouth;
- (iii) Little Applegate River Subbasin:
  - (I) Little Applegate River from the confluence with Lake Creek downstream to the mouth;
  - (II) Glade Creek from the confluence with Mule Gulch downstream to the mouth;
  - (III) Yale Creek from the intersection with the east line of Section 22, Township 40 South, Range 2 West, Willamette Meridian, to the mouth;
  - (IV) Sterling Creek from the intersection with the east line of Section 8, Township 39 South, Range 2 West, Willamette Meridian, to the mouth.
- (iv) Forest Creek from the intersection with the north line of Section 15, Township 38 South, Range 3 West, Willamette Meridian, to the mouth;
- (v) Thompson Creek from the intersection with the south line of Section 24, Township 39 South, Range 5 West, Willamette Meridian, to the mouth and the tributary of Ninemile Creek from the intersection with the east line of Section 30, Township 39 South, Range 4 West, Willamette Meridian, to the mouth;
- (vi) Williams Creek Subbasin:
  - (I) Williams Creek from the confluence with the East Fork and West Fork of Williams Creek downstream to the mouth;
  - (II) East Fork Williams Creek from the first intersection with the east line of Section 26, Township 39 South, Range 5 West, Willamette Meridian, to the mouth and the tributary of Rock Creek from the confluence with Horsetail Creek downstream to the mouth;
  - (III) West Fork Williams Creek from the confluence with Right Hand Fork of the West For, Williams Creek downstream to the mouth;
  - (IV) Right Hand Fork of the West Fork Williams Creek from the intersection with the south line of Section 13, Township 39 South, Range 6 West, Willamette Meridian, to the confluence of the West Fork Williams Creek;
  - (V) Bill Creek from the confluence with Bear Wallow Creek downstream to the mouth;
  - (VI) Munger Creek from the confluence with North Fork Munger Creek downstream to the mouth;
  - (VII) Powell Creek from the intersection with the west line of Section 167, Township 38 South, Range 5 West, Willamette Meridian, to the mouth.
- (vii) Cheney Creek from the intersection with the south line of Section 22, Township 37 South, Range 7 West, Willamette Meridian, to the mouth and the tributary of Little Cheney Creek from the intersection with the south line of Section 18, Township 37 South, Range 6 West, Willamette Meridian, to the mouth;
- (viii) Slate Creek Subbasin:
  - (I) Slate Creek from the intersection with the north line of Section 1, Township 37 South, Range 8 West, Willamette Meridian, to the mouth;

(II) Ramsey Creek from the intersection with the north line of Section 13, Township 37 South, Range 8 West, Willamette Meridian, to the mouth;  
 (III) Butcherknife Creek from the intersection with the west line of Section 18, Township 37 South, Range 7 West, Willamette Meridian, to the mouth;  
 (IV) Waters Creek from the intersection with the west line of Section 32, Township 36 South, Range 7 West, Willamette Meridian, to the mouth;  
 (V) The entire length of Bear Creek;  
 (VI) Salt Creek from the intersection with the north line of Section 8, Township 37 South, Range 7 West, Willamette Meridian, to the mouth;  
 (VII) Elliott Creek from the intersection with the south line of Section 15, Township 37 South, Range 7 West, Willamette Meridian, to the mouth;  
 (VIII) Round Prairie Creek from the intersection with the north line of Section 3, Township 37 South, Range 7 West, Willamette Meridian, to the mouth and the tributary of South Fork Round Prairie Creek from the intersection with the west line of Section 2, Township 37 South, Range 7 West, Willamette Meridian, to the mouth.

(b) Applications for the use of such water shall not be accepted by any state agency for any other purpose and the granting of applications for such other purposes is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated, coordinated program for the use and control of the water resources of the state;

(c) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Storage:

(a) All applications for storage in excess of 3,000,000 gallons utilizing the streams listed in paragraph (1)(a)(A) or tributaries shall be reviewed by the Water Policy Review Board prior to approval. During the review, the Board may establish minimum perennial streamflows for the natural flow of the affected stream or streams if deemed necessary to support aquatic life. Storage projects consistent with the purposes of minimum perennial streamflows shall be encouraged;

(b) Reservoir sites should be protected through the comprehensive planning process for possible further development or until alternative methods of meeting water needs have been developed. Immediate concern should be given to the following sites as delineated on Water Resources Department map file number 15B.4, Plate 4:

(A) Little Applegate River, site 26;

(B) Waters Creek, site 112;

(C) Elliott Creek, site 110.

(3) Minimum Perennials Streamflows:

(a) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life, and of attaining the highest and best use of waters released from storage, no appropriations of water except for domestic, livestock and irrigation of noncommercial gardens not to exceed 1/2 acre in area or waters legally released from storage shall be made or granted by any state agency or public corporation for the waters of the Applegate River or its tributaries for flows below the specified levels in **Table 3, Section A**;

(b)(A) To support aquatic life and minimize pollution in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriations of water shall be made or granted by any state agency or public corporation of the state for the waters of Williams Creek and Thompson Creek and tributaries for flows below the specified levels in **Table 3, Section B**. This limitation shall not apply to:

(i) Domestic and livestock uses. Domestic use does not include irrigation of lawns and gardens;

(ii) Water legally stored or released from storage, subject to paragraph (1)(a)(C) of this rule.

(B) Attainment of the specified flow levels during some portions of the year will require development of water storage or implementation of other measures to augment flows.

(4) Water Quality: Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not interfere with recreational, fish life, or other beneficial uses of water.

(5) Existing Rights: Water rights and permits issued prior to the effective date of this program shall not be affected.

[ED. NOTE: The Table referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert., ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66); Administrative Renumbering 1-1993, Renumbered from 690-080-0150

**690-515-0040**

### **Middle Rogue Basin**

#### **(1) Classifications:**

(a) The maximum economic development of this state, the attainment of the highest and best use of the waters of the Middle Rogue River Basin and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, agricultural use, power development, industrial, mining, recreation, wildlife and fish life uses and the waters of the Middle Rogue River are hereby so classified with the following exceptions:

(A) The maximum economic development of this state, the attainment of the highest and best use of waters within the Rogue River Scenic Waterway from the confluence with the Applegate River near river mile 95 to Lobster Creek Bridge near river mile 11 and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, and irrigation of one-half acre noncommercial garden, and instream use for recreation, wildlife and fish life, and the aforementioned waters of the Rogue River Scenic Waterway are hereby so classified;

(B) Those waters on which further development is restricted by ORS 538.270 and 542.210;

(C) The waters of the following streams and tributaries are classified only for domestic use, livestock consumption and instream use for recreation, fish life and wildlife except for the use of stored water. Water stored between November 1 and March 31 of any year may be used for any purpose specified in subsection (a) of this section. Domestic use does not include irrigation of lawns and gardens:

- (i) Galls Creek;
- (ii) Foots Creek;
- (iii) Birdseye Creek;
- (iv) Sardine Creek;
- (v) Same Creek;
- (vi) Kane Creek;
- (vii) Fruitdale Creek;
- (viii) Ward Creek;
- (ix) Gilbert Creek;
- (x) Jones Creek;
- (xi) Savage Creek.

(D) The waters of the following streams and tributaries, are classified only for domestic, livestock and irrigation of one-half acre noncommercial garden and instream use for recreation, fish life and wildlife except for the use of stored water. Water stored between November 1 and March 31 of any year may be used for any purpose specified in subsection (a) of this section:

- (i) Pickett Creek;
- (ii) Limpy Creek;
- (iii) Snider Creek;
- (iv) Shan Creek.

(E) The waters of the following streams and tributaries, are classified only for domestic, livestock, irrigation of one-half acre noncommercial garden, mining during the period November 1 to May 1, power development and instream use for recreation, fish life and wildlife except for the use of stored water. Water stored between November 1 and March 31 of any year may be used for any purpose specified in subsection (a) of this section:

- (i) Grave Creek;

*(ii) Evans Creek.*

*(F) The waters of Jumpoff Joe Creek and tributaries are classified only for domestic, livestock, irrigation of one-half acre noncommercial garden, industrial, mining during the period November 1 to May 1, power development and instream use for recreation, fish life and wildlife except for the use of stored water. Water stored between November 1 and March 31 of any year may be used for any purpose specified in subsection (a) of this section;*

*(G) To protect, maintain and perpetuate anadromous fish habitat and propagation within the Middle Rogue Basin, the waters of the following stream reaches shall not be diverted, interrupted or appropriated for hydropower development purposes:*

*(i) Galice Creek from the intersection with the south line of Section 10, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth;*

*(ii) North Fork Galice Creek from the intersection with the west line of Section 5, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth;*

*(iii) Taylor Creek from the intersection with the east line of Section 34, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth;*

*(iv) South Fork Taylor Creek from the intersection with the south line of Section 28, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth;*

*(v) Lone Tree Creek from the intersection with the north line of Section 32, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth;*

*(vi) Minnow Creek from the intersection with the south line of Section 34, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth.*

*(b) Applications for the use of the waters of the Middle Rogue River Basin shall not be accepted by any state agency for any other purpose than those specified in subsection (a) of this section and the granting of applications for such other purposes is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated, coordinated program for the use and control of the water resources of the state;*

*(c) Structures or works for the utilization of the waters in accordance with the aforementioned classifications, are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.*

*(2) Storage:*

*(a) All applications for appropriation of water for storage in structures impounding more than 3,000,000 gallons of water shall be reviewed by the Water Policy Review Board prior to approval. During the review the Water Policy Review Board may establish additional minimum flows on the natural flow of the stream to support aquatic life or minimize pollution. Storage projects consistent with the purposes of minimum perennial streamflows shall be encouraged;*

*(b) Potential reservoir sites should be identified in the comprehensive land use planning process for possible future development or until alternative methods of meeting water needs have been developed. Immediate consideration should be given to the following sites:*

*(A) Grave Creek, SE 1/4, Section 6, Township 34 South, Range 4 West, Willamette Meridian;*

*(B) Jumpoff Joe Creek, NE 1/4, Section 36, Township 34 South, Range 6 West, Willamette Meridian;*

*(C) Evans Creek, SE 1/4, Section 19, Township 34 South, Range 2 West, Willamette Meridian;*

*(D) West Fork Evans Creek, SE 1/4 Section 32, Township 33 South, Range 3 West, Willamette Meridian.*

*(3) Minimum Perennial Streamflows:*

*(a) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water shall be made or granted by any state agency or public corporation of the state for the waters of the Rogue River or tributaries above Raygold for flows of the Rogue River below 1200 cubic feet per second, except that this limitation shall not apply to:*

*(A) Waters legally stored or legally released from storage;*

*(B) Domestic and livestock uses. Domestic use does not include irrigation of lawns and gardens.*

*(b) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water shall be made or granted by any state agency or public corporation of the state for the waters of the Rogue River or tributaries above Savage Rapids Dam for flows of the Rogue River below 1,200 cubic feet per second, except that this limitation shall not apply to:*

*(A) Water legally stored or legally released from storage;*

*(B) Domestic and livestock uses. Domestic use does not include irrigation of lawns and gardens.*

*(c) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water except for domestic or livestock use shall be made or granted by any state agency or public corporation of the state, except that this limitation shall not apply to water legally stored or legally released from storage, for the waters of the Rogue River tributaries listed in **Table 4, Section B** when flows are below the specified levels. Domestic use does not include irrigation of lawns and gardens;*

*(d)(A) To support aquatic life and minimize pollution in accordance with Section 3, Chapter 796k, Oregon Laws 1983, no appropriations of water shall be made or granted by any state agency or public corporation of the state for the waters of the Rogue River tributaries listed in Table 4, Section C when flows are below the levels specified. This limitation shall not apply to:*

*(i) Domestic and livestock uses. Domestic use does not include the irrigation of lawns and gardens;*

*(ii) Water legally stored or released from storage subject to the provisions of subsection (2)(a) of this rule.*

*(B) Attainment of the specified flow levels during some portions of the year will require development of water storage or implementation of other measures to augment flows.*

*(4) Water Quality: Rights to use of water for industrial, power development, or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not significantly interfere with recreational, fish life or other beneficial uses of water.*

*(5) Existing Rights: This program does not modify, set aside or alter any existing right to use water or the priority of such use established under existing laws.*

*[ED. NOTE: The Table referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]*

*Stat. Auth.: ORS 536 & ORS 537*

*Stats. Implemented:*

*Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert., ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66); Administrative Renumbering 1-1993, Renumbered from 690-080-0150*

**690-515-0050**

### **Illinois Basin**

#### **(1) Classifications:**

*(a) The maximum economic development of this state and the attainment of the highest and best use of the waters of the Illinois River and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, agricultural use, power development, industrial, mining, recreation, wildlife and fish life uses including propagation and the waters of the Illinois River Basin are hereby so classified with the following exceptions:*

*(A) The maximum economic development of this state, the attainment of the highest and best use of waters within the Illinois River Scenic Waterway from the confluence with Deer Creek near river mile 47 to the confluence with the Rogue River and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic and livestock uses and instream use for recreation, wildlife and fish life, and the waters of the Illinois River Scenic Waterway are hereby so classified;*

*(B) The waters of the following streams and all tributaries are classified only for domestic, livestock, agricultural use, municipal, industrial, power development except for those streams listed in paragraph (C) of this subsection, mining use during the period November 1 to May 1, fish propagation, irrigation use for noncommercial gardens not exceeding one-half acre in area and instream use for recreation, fish life and wildlife. Water stored between November 1 and March 1 may be used at any time for purposes specified in subsection (a) of this section:*

*(i) Deer Creek;*

*(ii) East Fork Illinois River, except Althouse and Sucker Creeks and their tributaries;*

*(iii) West Fork Illinois River.*

*(C) The waters of Althouse and Sucker Creeks and tributaries are classified only for domestic, livestock and nonconsumptive instream uses for fish life, wildlife and recreation between May 1 and November 30*

of each year. Althouse and Sucker Creeks and tributaries are classified for domestic, livestock, mining (subject to Division 51 restrictions and except for those streams listed in paragraph (D) of this subsection), storage, and instream uses for fish life, wildlife and recreation between December 1 and April 30 of each year. Water stored between December 1 and April 30 may be used for any beneficial purpose. Permits shall be conditioned to prevent obstacles to fish migration and degradation of rearing or spawning habitat;

(D) To protect, maintain and perpetuate anadromous fish habitat and propagation, the waters of the following stream reaches shall not be diverted, interrupted or appropriated for hydropower development purposes. All preliminary permit applications on file with the Water Resources Department prior to October 14, 1983, will not be affected by this provision:

(i) West Fork Illinois River Subbasin:

(I) West Fork Illinois River from the confluence with Whiskey Creek downstream to the mouth;

(II) Whiskey Creek from the intersection with the west line of Section 8, Township 41 South, Range 9 West, Willamette Meridian, to the mouth;

(III) Elk Creek from the Oregon-California border downstream to the mouth;

(IV) Trapper Gulch from the intersection with the east line of Section 13, Township 41 South, Range 9 West, Willamette Meridian, to the mouth;

(V) Dwight Creek from the Oregon-California border downstream to the mouth;

(VI) Wood Creek from the potential reservoir site in SE 1/4 of NW 1/4 of Section 32, Township 40 South, Range 8 West, Willamette Meridian, to the mouth and the tributary of Fry Gulch from the intersection with the east line of Section 29, Township 40 South, Range 8 West, Willamette Meridian, to the mouth;

(VII) Rough and Ready Creek from the confluence with the North and South forks downstream to the mouth;

(VIII) North Fork Rough and Ready Creek from the intersection with the west line of Section 8, Township 40 South, Range 9 West, Willamette Meridian, to the mouth;

(IX) South Fork Rough and Ready Creek from the intersection with the west line of Section 20, Township 40 South, Range 9 West, Willamette Meridian, to the mouth.

(X) Mendenhall Creek from the intersection with the west line of Section 6, Township 40 South, Range 8 West, Willamette Meridian, to the mouth and the tributary of Parker Creek from the intersection with the west line of Section 7, Township 40 South, Range 8 West, Willamette Meridian, to the mouth;

(XI) Woodcock Creek from the intersection with the west line of Section 32, Township 39 South, Range 8 West, Willamette Meridian, to the mouth.

(ii) East Fork Illinois River Subbasin:

(I) East Fork Illinois River from the Oregon-California border downstream to the mouth;

(II) Page Creek from the intersection with the east line of Section 2, Township 41 South, Range 8 West, Willamette Meridian, to the mouth;

(III) Elder Creek from the intersection with the east line of Section 26, Township 40 South, Range 8 West, Willamette Meridian, to the mouth;

(IV) Althouse Creek from the potential reservoir site in SW 1/4 of SW 1/4 of Section 4, Township 40 South, Range 7 West, Willamette Meridian, to the mouth;

(V) Sucker Creek from the potential reservoir site in NE 1/4 of Section 25, Township 39 South, Range 7 West, Willamette Meridian, to the mouth;

(VI) Little Grayback Creek from the intersection with the south line of Section 13, Township 39 South, Range 7 West, Willamette Meridian, to the mouth;

(VII) Bear Creek from the intersection with the north line of Section 21, Township 39 South, Range 7 West, Willamette Meridian, to the mouth;

(VIII) Chapman Creek from the confluence with East Fork Chapman Creek downstream to the mouth.

(iii) Holton Creek from the intersection with the east line of Section 10, Township 39 South, Range 8 West, Willamette Meridian, to the mouth;

(iv) Reeves Creek from the intersection with the east line of Section 34, Township 38 South, Range 8 West, Willamette Meridian, to the mouth;

(v) Josephine Creek from the intersection with the west line of Section 26, Township 39 South, Range 9 West, Willamette Meridian, to the mouth and the tributary of Canyon Creek from the confluence with Sebastopol Creek downstream to the mouth;

(vi) Deer Creek Subbasin:

(I) Deer Creek from the confluence with North Fork and South Fork Deer Creek downstream to the mouth;

- (II) South Fork Deer Creek from the intersection with the south line of Section 29, Township 38 South, Range 6 West, Willamette Meridian, to the mouth;
- (III) North Fork Deer Creek from the intersection with the north line of Section 18, Township 38 South, Range 6 West, Willamette Meridian, to the mouth;
- (IV) White Creek from the intersection with the south line of Section 13, Township 38 South, Range 7 West, Willamette Meridian, to the mouth;
- (V) Crooks Creek from the intersection with the east line of Section 34, Township 37 South, Range 7 West, Willamette Meridian, to the mouth;
- (VI) Thompson Creek from the confluence with Haven Creek downstream to the mouth;
- (VII) Draper Creek from the intersection with the east line of Section 31, Township 37 South, Range 7 West, Willamette Meridian, to the mouth;
- (VIII) Clear Creek from the intersection with the west line of Section 23, Township 37 South, Range 8 West, Willamette Meridian, to the mouth and the tributary of Anderson Creek from the intersection with the north line of Section 35, Township 37 South, Range 8 West, Willamette Meridian, to the mouth.
- (vii) Sixmile Creek from the intersection with the north line of Section 25, Township 37 South, Range 9 West, Willamette Meridian, to the mouth;
- (viii) Fall Creek from the intersection with the south line of Section 4, Township 38 South, Range 9 West, Willamette Meridian, to the mouth;
- (ix) Rancherie Creek from the intersection with the west line of Section 17, Township 38 South, Range 9 West, Willamette Meridian, to the mouth;
- (x) Dailey Creek from the intersection with the west line of Section 31, Township 37 South, Range 9 West, Willamette Meridian, to the mouth;
- (xi) Briggs Creek Subbasin:
  - (I) The entire mainstem of Briggs Creek;
  - (II) Horse Creek from the intersection with the east line of Section 8, Township 36 South, Range 8 West, Willamette Meridian, to the mouth;
  - (III) Myers Creek from the confluence with Dutchy Creek downstream to the mouth and the tributary of Dutchy Creek from the intersection with the north line of Section 7, Township 36 South, Range 8 West, Willamette Meridian, to the mouth;
  - (IV) Brush Creek from the intersection with the north line of Section 18, Township 36 South, Range 8 West, Willamette Meridian, to the mouth;
  - (V) Secret Creek from the intersection with the east line of Section 16, Township 36 South, Range 8 West, Willamette Meridian, to the mouth;
  - (VI) Onion Creek from the intersection with the south line of Section 29, Township 36 South, Range 8 West, Willamette Meridian, to the mouth;
  - (VII) Swede Creek from the intersection with the east line of Section 1, Township 37 South, Range 9 West, Willamette Meridian, to the mouth;
  - (VIII) Soldier Creek from the confluence with Horse Creek downstream to the mouth and the tributary of Horse Creek from the intersection with the east line of Section 11, Township 37 South, Range 9 West, Willamette Meridian, to the mouth.
- (xii) Panther Creek from the intersection with the north line of Section 31, Township 36 South, Range 9 West, Willamette Meridian, to the mouth;
- (xiii) Labrador Creek from the intersection with the south line of Section 12, Township 37 South, Range 10 West, Willamette Meridian, to the mouth;
- (xiv) Nome Creek from the intersection with the south line of Section 12, Township 37 South, Range 10 West, Willamette Meridian, to the mouth;
- (xv) Clear Creek from the intersection with the east line of Section 35, Township 36 South, Range 10 West, Willamette Meridian, to the mouth;
- (xvi) Pine Creek from the first intersection with the east line of Section 27, Township 36 South, Range 10 West, Willamette Meridian, to the mouth;
- (xvii) Klondike Creek from the intersection with the south line of Section 10, Township 36 South, Range 10 West, Willamette Meridian, to the mouth and the tributary of Yukon Creek from the intersection with the south line of Section 5, Township 37 South, Range 10 West, Willamette Meridian, to the mouth;
- (xviii) Collier Creek from the intersection with the west line of Section 7, Township 37 South, Range 11 West (projected), Willamette Meridian, to the mouth;
- (xix) Silver Creek Subbasin:



- (I) Silver Creek from the confluence with South Fork Silver Creek downstream to the mouth;
- (II) South Fork Silver Creek from the intersection with the east line of Section 21, Township 36 South, Range 10 West, Willamette Meridian, to the mouth;
- (III) North Fork Silver Creek from the intersection with the east line of Section 18, Township 35 South, Range 9 West, Willamette Meridian, to the mouth.
- (xx) Indigo Creek from the intersection with the east line of Section 31, Township 35 South, Range 10-1/2 West, Willamette Meridian, to the mouth and the tributary of North Fork Indigo Creek from the intersection with the north line of Section 34, Township 35 South, Range 11 West, Willamette Meridian, to the mouth;
- (xxi) Horse Sign Creek from the intersection with the south line of Section 7, Township 36 South, Range 11 West, Willamette Meridian, to the mouth;
- (xxii) Lawson Creek from the intersection with the west line of Section 2, Township 36 South, Range 12 West (projected), Willamette Meridian, to the mouth;
- (xxiii) Fox Creek from the intersection with the south line of Section 19, Township 35 South, Range 11 West, Willamette Meridian, to the mouth.
- (E) The waters of the mainstem Illinois River from the confluence of the East and West Forks Illinois River downstream to the confluence with Deer Creek near river mile 47 are classified only for domestic, livestock and agricultural uses, fish propagation, irrigation use for noncommercial gardens not exceeding one-half acre in area and instream use for recreation, fish life and wildlife during the period July 1 to October 31 of every year. Water stored between November 1 and March 31 may be used at any time for purposes specified in subsection (a) of this section.
- (b) Applications for the use of the waters of the Illinois River Basin shall not be accepted by any state agency for any other purpose than those specified in subsection (a) of this section and the granting of applications of such other purposes is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated, coordinated program for the use and control of the water resources of the state;
- (c) Structures or works for the utilization of the waters in accordance with the aforementioned classifications, are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.
- (2) Storage:
- (a) All applications for appropriation of water for storage in structures impounding more than 3,000,000 gallons of water shall be reviewed by the Water Policy Review Board prior to approval. During the review, the Water Policy Review Board may establish additional minimum flows on the natural flow of the stream to support aquatic life or minimize pollution. Storage projects consistent with the purposes of minimum flows shall be encouraged;
- (b) Potential reservoir sites should be identified through the comprehensive planning process for possible future development or until alternative methods of meeting water needs have been developed. Immediate concern should be given to the following sites:
- (A) Wood Creek, SE 1/4 NW 1/4 Section 32, Township 40 South, Range 8 West, Willamette Meridian;
- (B) Sucker Creek, NE 1/4 Section 25, Township 39 South, Range 7 West, Willamette Meridian;
- (C) Upper Althouse Creek, SW 1/4 SW 1/4 Section 4, Township 40 South, Range 7 West, Willamette Meridian.
- (3) Minimum Perennial Streamflows:
- (a) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water except for domestic and livestock use shall be made or granted by any state agency or public corporation of the state, except that this limitation shall not apply to water legally stored or legally released from storage, for the waters of the Illinois River or the tributaries above the confluence with the Rogue River for flows of the Illinois River at the mouth below 80 cubic feet per second and when flows are below the specified levels listed in **Table 5, Section A**. Domestic use does not include irrigation of lawn and garden;
- (b)(A) To support aquatic life and minimize pollution, in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriations of water shall be made or granted by any state agency or public corporation of the state, for the waters of the following Illinois River tributaries listed in **Table 5, Section B** when flows are below the specified levels. This limitation shall not apply to:

(i) Domestic and livestock use. Domestic use does not include irrigation of lawns and gardens;  
(ii) Water legally stored or released from storage subject to provisions of section A5.  
(B) Attainment of the specified flow levels during some portion of the year will require development of water storage or implementation of other measures to augment flows.  
(4) Water Quality: Rights to use of water for industrial, power development, or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not interfere with recreational, fish life, or other beneficial uses of water.  
(5) Existing Rights: This program does not modify, set aside or alter any existing right to use water or the priority of such use established under existing laws.  
[ED. NOTE: The Table referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert., ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66); Administrative Renumbering 1-1993, Renumbered from 690-080-0150

**690-515-0060**

### **Lower Rogue Basin**

#### **(1) Classifications:**

(a) The maximum economic development of this state, the attainment of the highest and best use of the waters of the Lower Rogue River Basin and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, agricultural use, power development, industrial, mining, recreation, wildlife and fish life uses and the waters of the Lower Rogue River Basin are hereby so classified with the following exceptions:

(A) The maximum economic development of this state, the attainment of the highest and best use of the waters within the Rogue River Scenic Waterway from the confluence with Applegate River near river mile 95 to Lobster Creek Bridge near river mile 11 and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, and irrigation of one-half acre noncommercial garden, and instream use for recreation, wildlife and fish life uses and the aforementioned waters of the Rogue River Scenic Waterway are hereby so classified;

(B) Those waters on which further development is restricted by ORS 538.270 and 542.210;

(C) To protect, maintain and perpetuate anadromous fish habitat and propagation within the Lower Rogue Basin, the waters of the following stream reaches of tributaries to the Rogue River shall not be diverted, interrupted or appropriated for hydropower development purposes:

(i) Lobster Creek from the confluence of the North and South Forks of Lobster Creek, downstream to the mouth;

(ii) North Fork Lobster Creek from the intersection with the east line of Section 15, Township 34 South, Range 13 West, Willamette Meridian, downstream to the mouth;

(iii) South Fork Lobster Creek from the intersection with the east line of Section 30, Township 34 South, Range 12 West, Willamette Meridian, downstream to the mouth;

(iv) Shasta Costa Creek from the intersection with the east line of Section 35, Township 34 South, Range 11 West, Willamette Meridian, downstream to the mouth;

(v) Foster Creek from the intersection with the west line of Section 12, Township 34 South, Range 12 West, Willamette Meridian, downstream to the mouth;

(vi) Quosatana Creek from the intersection with the projected south line of Section 23, Township 36 South, Range 13 West, Willamette Meridian, downstream to the mouth;

(vii) Jim Hunt Creek from the intersection with the south line of Section 14, Township 36 South, Range 14 West, Willamette Meridian, Downstream to the mouth;

(viii) Mule Creek from the intersection with the east line of Section 26, Township 32 South, Range 10 West, Willamette Meridian, downstream to the mouth.

(b) Applications for the use of the waters of the Lower Rogue River Basin shall not be accepted by any

state agency for any other purpose than those specified in subsection (a) of this section and the granting of applications for such other purposes is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated, coordinated program for the use and control of the water resources of the state;

(c) Structures or works for the utilization of the waters in accordance with the aforementioned classifications, are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) *Minimum Perennials Streamflows:* For the purpose of maintaining minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water shall be made or granted by any state agency or public corporation of the state for the waters of the Rogue River or the tributaries above the mouth for flows of the Rogue River at the mouth below 935 cubic feet per second, except that this limitation shall not apply to:

(a) Water legally stored or legally released from storage;

(b) Domestic and livestock uses. Domestic use does not include irrigation of lawns and gardens.

(3) *Water Quality:* Rights to use of water for industrial, power development or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not significantly interfere with recreational, fish life, or other beneficial uses of water.

(4) *Existing Rights:* This program does not modify, set aside or alter any existing right to use water or the priority of such use established under existing laws.

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert., ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66); Administrative Renumbering 1-1993, Renumbered from 690-080-0150

#### **DIVISION 516 UMPQUA BASIN PROGRAM**

[NOTE: The Umpqua River Basin is delineated on State Water Resources Board Map 16.6, dated 1969, available from the agency.]

#### **690-516-0005**

##### **Classifications**

(1) The maximum economic development of this state, the attainment of the highest and best use of the waters of the Umpqua River Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, temperature control, power development, industrial, mining, recreation, wildlife, fish life uses, and pollution abatement; and the waters of the Umpqua River Basin are hereby so classified with the following exceptions:

(a) Preference shall be given to human consumption, livestock consumption and irrigation of non-commercial gardens not to exceed one-half acre in area for all the waters of the Umpqua River Basin over any other beneficial uses;

(b) The waters of the natural lakes of the Umpqua River Basin are classified only for the utilization of water for domestic, livestock, power development not to exceed 7-1/2 theoretical horsepower, and in-lake uses for recreation, wildlife, and fish life purposes;

(c) The waters of Roberts Creek and its tributaries were withdrawn by Water Resources Commission's Order of Withdrawal on October 4, 1991;

(d) The unappropriated waters of Lookingglass Creek and tributaries are withdrawn from further appropriation except for domestic and livestock watering uses under 5,000 gallons per day per appropriation and water legally stored and released from storage from June 1 through September 30 of each year, by the Water Policy Review Board's Order of Withdrawal dated April 3, 1983.

(e) The unappropriated waters of the South Umpqua River and tributaries, excluding Lookingglass and Roberts Creeks, are withdrawn from further appropriation except for human consumption, livestock

consumption, irrigation of up to 1/2-acre non-commercial garden and water legally released from storage from July 15 through September 30 of each year, by the Water Policy Review Board's Order of Withdrawal dated April 29, 1985. This limitation shall not affect the withdrawals previously enacted by the Board for the waters of Roberts and Lookingglass Creeks.

(2) Applications for the use of the waters of the Umpqua River Basin shall not be accepted by any state agency for any purposes contrary to the classifications herein specified, and the granting of applications for such other purposes is declared to be prejudicial to the public interest, and the granting of applications for such other use would be contrary to this water-use program.

(3) Structures or works for utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed and operated in conformity with the applicable provisions of ORS 536.310; and any such structures or works which do not give cognizance to the multiple-purpose concept are further declared to be prejudicial to the public interest.

Stat. Auth.: ORS 536.300, ORS 536.340 & ORS 536.410

Stats. Implemented:

Hist.: (WRB 9, f. 4-21-59; WRB 11, f. 10-31-60; WRB 22, f. 11-16-62; WRB 27, 5-11-64; WRB 58, f. 4-15-74; WRD 8(Temp), f. 7-22-77; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 6-1981(Temp), f. & cert. ef. 8-25-81; WRD 8-1982, f. & cert. ef. 7-1-82; WRD 7-1984, f. & cert. ef. 12-27-84; WRD 4-1985, f. & cert. ef. 5-15-85; WRD 8-1985, f. & cert. ef. 8-2-85; WRD 9-1985, f. 8-2-85; South Umpqua WRB 22, f. 11-16-62; Main Stem-Umpqua System, WRB 27, f. 5-11-64) WRD 8-1991, f. & cert. ef. 11-7-91, Renumbered from 690-080-0160

**690-516-0010**

#### **Minimum Perennial Streamflows**

(1) For the purpose of maintaining minimum perennial streamflows sufficient to support aquatic life, no appropriations of water except for human consumption, livestock consumption and irrigation of non-commercial gardens not to exceed one-half acre in area and waters legally released from storage shall be made or granted by any state agency or public corporation of the state for the waters of the following streams when flows are at or below the levels specified in **Table 1**.

(2) The minimum perennial streamflows established by the October 24, 1958, Umpqua Basin program shall remain in effect over appropriations issued from October 24, 1958 to March 26, 1974.

[ED. NOTE: The Table referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 536.300, ORS 536.340 & ORS 536.410

Stats. Implemented:

Hist.: (WRB 9, f. 4-21-59; WRB 11, f. 10-31-60; WRB 22, f. 11-16-62; WRB 27, 5-11-64; WRB 58, f. 4-15-74; WRD 8(Temp), f. 7-22-77; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 6-1981(Temp), f. & cert. ef. 8-25-81; WRD 8-1982, f. & cert. ef. 7-1-82; WRD 7-1984, f. & cert. ef. 12-27-84; WRD 4-1985, f. & cert. ef. 5-15-85; WRD 8-1985, f. & cert. ef. 8-2-85; WRD 9-1985, f. 8-2-85; South Umpqua WRB 22, f. 11-16-62; Main Stem-Umpqua System, WRB 27, f. 5-11-64) WRD 8-1991, f. & cert. ef. 11-7-91, Renumbered from 690-080-0160

**690-516-0020**

#### **Storage**

All applications for appropriation of water for storage in structures impounding more than 3,000,000 gallons of water shall be reviewed by the Water Policy Review Board prior to approval. During the review, the Water Policy Review Board may establish additional minimum flows on the natural flow of the stream to support aquatic life or minimize pollution.

Stat. Auth.: ORS 536.300, ORS 536.340 & ORS 536.410

Stats. Implemented:

Hist.: (WRB 9, f. 4-21-59; WRB 11, f. 10-31-60; WRB 22, f. 11-16-62; WRB 27, 5-11-64; WRB 58, f. 4-15-74; WRD 8(Temp), f. 7-22-77; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 6-1981(Temp), f. & cert. ef. 8-25-81; WRD 8-1982, f. & cert. ef. 7-1-82; WRD 7-1984, f. & cert. ef. 12-27-84; WRD 4-1985, f. & cert. ef. 5-15-85; WRD 8-1985, f. & cert.

ef. 8-2-85; WRD 9-1985, f. 8-2-85; South Umpqua WRB 22, f. 11-16-62; Main Stem-Umpqua System, WRB 27, f. 5-11-64) WRD 8-1991, f. & cert. ef. 11-7-91, Renumbered from 690-080-0160

**690-516-0030**

### **Out-of-Basin Appropriations**

To support present and proposed Umpqua River Basin water resource development, no out-of-basin appropriation of the waters of the Umpqua River Basin shall be made or granted by any state agency or public corporation of the state without the prior approval of, and following a public hearing by, the Water Policy Review Board.

Stat. Auth.: ORS 536.300, ORS 536.340 & ORS 536.410

Stats. Implemented:

Hist.: (WRB 9, f. 4-21-59; WRB 11, f. 10-31-60; WRB 22, f. 11-16-62; WRB 27, 5-11-64; WRB 58, f. 4-15-74; WRD 8(Temp), f. 7-22-77; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 6-1981(Temp), f. & cert. ef. 8-25-81; WRD 8-1982, f. & cert. ef. 7-1-82; WRD 7-1984, f. & cert. ef. 12-27-84; WRD 4-1985, f. & cert. ef. 5-15-85; WRD 8-1985, f. & cert. ef. 8-2-85; WRD 9-1985, f. 8-2-85; South Umpqua WRB 22, f. 11-16-62; Main Stem-Umpqua System, WRB 27, f. 5-11-64) WRD 8-1991, f. & cert. ef. 11-7-91, Renumbered from 690-080-0160

**690-516-0040**

### **Water Quality**

Rights to use of water granted by any state agency in accordance with this water-use program shall be issued only on the condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

Stat. Auth.: ORS 536.300, ORS 536.340 & ORS 536.410

Stats. Implemented:

Hist.: (WRB 9, f. 4-21-59; WRB 11, f. 10-31-60; WRB 22, f. 11-16-62; WRB 27, 5-11-64; WRB 58, f. 4-15-74; WRD 8(Temp), f. 7-22-77; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 6-1981(Temp), f. & cert. ef. 8-25-81; WRD 8-1982, f. & cert. ef. 7-1-82; WRD 7-1984, f. & cert. ef. 12-27-84; WRD 4-1985, f. & cert. ef. 5-15-85; WRD 8-1985, f. & cert. ef. 8-2-85; WRD 9-1985, f. 8-2-85; South Umpqua WRB 22, f. 11-16-62; Main Stem-Umpqua System, WRB 27, f. 5-11-64) WRD 8-1991, f. & cert. ef. 11-7-91, Renumbered from 690-080-0160

## **WATER RESOURCES DEPARTMENT**

### **DIVISION 517**

### **SOUTH COAST BASIN PROGRAM**

[NOTE: The South Coast Basin is delineated on agency Map, File 17.6, available from the agency.]

**690-517-0000**

### **Classifications**

(1) Ground water resources in sections or the portions of Sections 13, 14, 22, 23, 26, 27, 32, 33 and 34 of Township 23 South, Range 13 West; 2, 3, 4, 9, 10, 11, 14, 15, 16, 17, 20, 21, 22, 27, 28, 29, 31, 32, 33 and 34 of Township 24 South, Range 13 West; and 3, 4, 5 and 6 of Township 25 South, Range 13 West, bounded on the north by Tenmile Creek, on the west by the Pacific Ocean, on the south by Coos Bay and on the east by Highway 101 are hereby classified for single or group domestic, livestock, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area and any single industrial or commercial use not exceeding 5,000 gallons per day.

(2) The waters of the following lakes are classified only for domestic, livestock, municipal, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area and in-lake use for recreation, fish life and wildlife. The Director of the Water Resources Department may place specific limits on municipal appropriations from the lakes or require outlet control structures to protect recreation, fish life and wildlife uses:

(a) Bradley Lake;

(b) Eel Lake;

(c) Garrison Lake.

(3) All other natural lakes are classified only for domestic and livestock uses, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area and in-lake use for recreation, fish life and wildlife.

(4) Waters of the following streams and all tributaries are classified only for domestic and livestock uses,

irrigation of lawns and noncommercial gardens not exceeding one-half acre in area, fire control and instream use for recreation, fish life and wildlife:

(a) Glenn Creek (tributary to the East Fork Millicoma River);

(b) Brush Creek.

(5) The waters of the Middle Fork of the Coquille River and tributaries upstream from the confluence with Holmes Creek are classified only for domestic, livestock and irrigation of lawns and noncommercial gardens not exceeding one-half acre in area and instream use for recreation, fish life and wildlife during the period from July 1 to September 30 of every year. Water stored between October 1 and June 30 may be used at any time for purpose specified in section (8) of this rule.

(6) The waters of the West Fork Millicoma River and tributaries above Stall Falls are classified for municipal, domestic and livestock uses, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area and instream use for recreation, fish life and wildlife.

(7) The waters of Pony Creek above lower Pony Creek Dam and Ferry and Geiger Creeks above the Ferry Creek -- Geiger Creek confluence are classified for municipal use.

(8) All other surface and ground water resources are hereby classified for domestic, livestock, municipal, industrial, fire control, irrigation, agricultural use, mining, power development, recreation, wildlife and fish life uses.

(9) Applications for the use of water for any purposes contrary to classifications specified in the basin program shall not be accepted or granted except as provided by law. The Director shall notify the Board and other interested individuals or agencies of the intent to accept an application for use in conflict with the adopted program in accordance with ORS 536.380 if the proposed use will not have a significant impact on any other water use as provided in sections (1) through (8) of this rule and in OAR 690-517-0010 through 690-517-0020.

(10) The planning, construction and operation of any structures or works for the utilization of water in accordance with the aforementioned classifications are to conform with the applicable provisions of ORS 536.310, including but not restricted to the recommendation of the multiple-purpose concept.

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 24, f. 12-16-63; WRB f. 6-2-64; WRD 4, f. 5-6-77; WRD 6, f. 7-5-77; WRD 1-1979, f. & cert. ef. 2-1-79; WRD 6-1980, f. & cert. ef. 4-11-80; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 5-1984, f. & cert. ef. 10-30-84; Administrative Renumbering 1-1993, Renumbered from 690-080-0170

#### **690-517-0010**

##### **Reservations**

Water in the amounts specified is reserved in the following streams for municipal use:

(1) Chetco River -- three cfs, downstream from the confluence with the North Fork Chetco River.

(2) Winchuck River -- one cfs, downstream from the confluence with Bear Creek.

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 24, f. 12-16-63; WRB f. 6-2-64; WRD 4, f. 5-6-77; WRD 6, f. 7-5-77; WRD 1-1979, f. & cert. ef. 2-1-79; WRD 6-1980, f. & cert. ef. 4-11-80; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 5-1984, f. & cert. ef. 10-30-84; Administrative Renumbering 1-1993, Renumbered from 690-080-0170

#### **690-517-0020**

##### **Minimum Perennial Streamflows**

(1) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life, no appropriations of water except for domestic or livestock uses and irrigation of noncommercial gardens not exceeding one-half acre in area shall be allowed for the waters of the streams and tributaries listed in **Table 1** when flows are below the specified levels.

(2) The Water Policy Review Board requests the opportunity to review applications for an allowed beneficial use that has traditionally been identified as nonconsumptive or take-and-put, such as fish hatcheries, hydroelectric facilities, municipal or water process industries that could potentially impact, in an adverse way, the Board's minimum flow regime or the public interest. The Water Policy Review Board intends to continue to protect, in its entirety, that portion of the stream system on which any minimum streamflow has been established. Permitting procedures and water use regulation should reflect that objective as far as possible under the law. The Board solicits the advice or complaints of any party who is aware that the objectives are not being met.

(3) Minimum flows established in the Water Resource Program for the South Coast Basin dated May 22,

1964 (**Table 2**), shall remain in full force and effect except as follows:

(a) The minimum perennial streamflow for the Elk River above U.S. Highway 101 crossing (45 cfs) is rescinded;

(b) The minimum perennial streamflow for the Coquille River Middle Fork above Bear Creek (4 cfs) is rescinded;

(c) The minimum perennial streamflow for the Sixes River above the U.S. Highway 101 crossing is reduced to 25 cfs during the period from August 1 to September 30;

(d) The minimum perennial streamflow for the South Fork Coquille River near Powers is reduced to 15 cfs during the period from June 16 to September 30.

(4) For purposes of distributing water, minimum flows established in 1964 shall be considered part of and not in addition to revised minimum flow regimes.

(5) To support aquatic life and minimize pollution, in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriations of water shall be made or granted by any state agency or public corporation of the state for the waters of the Coquille River and tributaries when flows are below the specified levels in **Table 2**. This limitation shall not apply to:

(a) Domestic and livestock uses and irrigation of non-commercial gardens not exceeding 1/2 acre in area;

(b) Water legally released from storage.

[ED. NOTE: The Tables referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 24, f. 12-16-63; WRB f. 6-2-64; WRD 4, f. 5-6-77; WRD 6, f. 7-5-77; WRD 1-1979, f. & cert. ef. 2-1-79; WRD 6-1980, f. & cert. ef. 4-11-80; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 5-1984, f. & cert. ef. 10-30-84; Administrative Renumbering 1-1993, Renumbered from 690-080-0170

#### **690-517-0030**

##### **Storage**

(1) All applications for appropriation of water for storage in structures impounding more than 3,000,000 gallons of water shall be reviewed by the Water Policy Review Board prior to approval. During the review the Water Policy Review Board may establish additional minimum flows on the natural flow of the stream to support aquatic life or minimize pollution.

(2) The following reservoir sites should be protected through the comprehensive planning process for possible future development or until alternative methods of meeting water needs have been developed:

(a) West Fork of the Millicoma River, site 223;

(b) South Fork of Coquille River at Eden Ridge, site 430;

(c) North Fork Coquille River, site 146A;

(d) Rock Creek at Rasler Creek, site 201;

(e) Catching Creek, site 101;

(f) Fourmile Creek, site 158;

(g) North Fork Floras Creek at Okietown, sit 435;

(h) North Fork Chetco River, site 239;

(i) Wheeler Creek, site 241;

(j) East Fork Winchuck River, site 243;

(k) Joe Ney Slough.

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 24, f. 12-16-63; WRB f. 6-2-64; WRD 4, f. 5-6-77; WRD 6, f. 7-5-77; WRD 1-1979, f. & cert. ef. 2-1-79; WRD 6-1980, f. & cert. ef. 4-11-80; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 5-1984, f. & cert. ef. 10-30-84; Administrative Renumbering 1-1993, Renumbered from 690-080-0170

#### **690-517-0040**

##### **Out-of-Basin Appropriations**

No out-of-basin diversion of South Coast Basin water shall be made or granted by any state agency or public corporation of the state without the prior approval of, and following a public hearing by, the Water Policy Review Board.

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 24, f. 12-16-63; WRB f. 6-2-64; WRD 4, f. 5-6-77; WRD 6, f. 7-5-77; WRD 1-1979, f. & cert. ef.

*2-1-79; WRD 6-1980, f. & cert. ef. 4-11-80; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 5-1984, f. & cert. ef. 10-30-84; Administrative Renumbering 1-1993, Renumbered from 690-080-0170*

**690-517-0050**

**Existing Rights**

*Water rights and permits issued prior to the effective date of this program shall not be affected except as provided in OAR 690-517-0020 and 690-517-0030(1).*

*Stat. Auth.: ORS 536 & ORS 537*

*Stats. Implemented:*

*Hist.: WRB 24, f. 12-16-63; WRB f. 6-2-64; WRD 4, f. 5-6-77; WRD 6, f. 7-5-77; WRD 1-1979, f. & cert. ef. 2-1-79; WRD 6-1980, f. & cert. ef. 4-11-80; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 5-1984, f. & cert. ef. 10-30-84; Administrative Renumbering 1-1993, Renumbered from 690-080-0170*



# **WATER RESOURCES DEPARTMENT**

## **DIVISION 518**

### **MID-COAST BASIN PROGRAM**

[NOTE: The Mid-Coast Basin is delineated on State Water Resources Board Map 18.6, dated 1964, available from the agency.]

**690-518-0010**

#### **Classifications**

(1) The maximum economic development of this state, the attainment or the highest and best use of the waters of the Mid-Coast Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial mining, recreation, wildlife and fish life uses with preference given to human consumption and livestock consumption over any other beneficial uses. The waters of the Mid-Coast Basin are hereby so classified with the following exceptions:

(a) The waters of the following natural lakes of the Mid-Coast Basin are classified only for utilization of water for domestic, livestock, and in-lake uses for recreation, wildlife, and fish life purposes: Devils, Triangle, Lily, Sutton, Mercer, Collard, Munsel, Cleawox, Carter, Lost, Elbow, Clear, Woahink, Siltcoos, Tahkenitch, and Threemile;

(b) The waters of Clear Lake are classified for municipal use in addition to the uses specified in subsection (a) of this section;

(c) The waters of the following streams and their tributaries are classified only for utilization of water for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development and instream uses for recreation, wildlife, and fish life purposes:

(A) Schoolhouse Creek (Mouth in Township 8 South);

(B) Fogarty Creek;

(C) Deadhorse Creek;

(D) Canal Creek of Alsea Bay;

(E) Cummins Creek;

(F) Bob Creek;

(G) Tenmile Creek;

(H) Big Creek at Roosevelt Beach;

(I) Cape Creek at Heceta Head;

(J) Quarry Creek;

(K) Knowles Creek of Siuslaw River;

(L) Hadsall Creek of Siuslaw River;

(M) Woahink Creek;

(N) Siltcoos River;

(O) Tahkenitch Creek; and

(P) Threemile Creek.

(d) The waters of the following streams and their tributaries are classified only for utilization of water for domestic, livestock, municipal, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development and instream uses for recreation, wildlife, and fish life purposes:

(A) Salmon River;

(B) Schooner Creek of Siletz Bay upstream from the intersection of Schooner Creek and the section line between Section 25, Township 7 South, Range 11 West, WM, and Section 30, Township 7 South, Range 10 West, WM;

(C) Drift Creek of Siletz Bay;

(D) Tributaries to Depoe Bay;

(E) Rocky Creek;

(F) Spencer Creek;

(G) Moolack Creek;

(H) Big Creek near Newport;

(I) Henderson Creek (Mouth in Township 11 South);

(J) Beaver Creek (Mouth in Township 12 South);

(K) Big Creek at San Marine;

(L) Vingie Creek;

- (M) Starr Creek;
- (N) Sutton Creek; and
- (O) Munsel Creek.

(e) The waters of Olalla Creek and its tributaries are classified for human consumption, livestock consumption, industrial, and instream uses for recreation, wildlife, and fish life purposes;

(f) The waters of Schooner Creek and its tributaries downstream from the intersection of Schooner Creek and the section line between Section 25, Township 7 South, Range 11 West, WM, and Section 30, Township 7 South, Range 10 West, WM, are classified for domestic, livestock, municipal, irrigation and frost control not to exceed an additional total appropriation of 2.5 cfs, power development and instream uses for recreation, wildlife, and fish life purposes; and

(g) The waters of Thiel Creek are classified for domestic, livestock, municipal, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development, aesthetics and in-lake and instream uses for recreation, fish life and wildlife purposes.

(2) Applications for the use of the waters of the Mid-Coast Basin shall not be accepted by any state agency for any purposes contrary to the classifications herein specified, and the granting of applications for such other purposes is declared to be prejudicial to the public interest, and the granting of applications for such other uses would be contrary to this water use program.

(3) Structures or works for utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with the applicable provisions of ORS 536.310; and any such structures or works, which do not give cognizance to the multiple-purpose concept are further declared to be prejudicial to the public interest.

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 36, f. 7-27-66; WRB 59, f. 4-15-74; WRB 62, f. 3-26-75; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 4-1984, f. & cert. ef. 10-30-84; WRD 5-1987, f. & cert. ef. 5-20-87; WRD 20-1990, f. & cert. ef. 12-14-90, Renumbered from 690-080-0180

#### **690-518-0020**

##### **Reservations**

(1) In addition to the uses specified in subsection (1)(a) of OAR 690-518-0010, 1.5 cfs of the water of Woahink Lake are reserved for municipal purposes and 0.75 cfs for public park purposes.

(2) The waters of the following streams are reserved for municipal purposes in the amounts specified:

(a) Alsea River below stream mile 25 -- 5 cfs

(b) Yachats River below stream mile 5 -- 1 cfs

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 36, f. 7-27-66; WRB 59, f. 4-15-74; WRB 62, f. 3-26-75; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 4-1984, f. & cert. ef. 10-30-84; WRD 5-1987, f. & cert. ef. 5-20-87; WRD 20-1990, f. & cert. ef. 12-14-90, Renumbered from 690-080-0180

#### **690-518-0030**

##### **Minimum Perennial Streamflows**

(1) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and recreation, no appropriations of water except for reservations in OAR 690-518-0020, human consumption, livestock consumption, or waters legally released from storage shall be made or granted by any state agency or public corporation of the state for the waters of the following streams and their tributaries for flows below the amounts specified in **Table 1**.

(2)(a) To support aquatic life and minimize pollution, in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriation of water shall be made or granted by any state agency or public corporation of the state for waters of the streams and tributaries listed in **Table 2** when flows are below the specified levels. This limitation shall not apply to:

(A) Human and livestock consumption; and

(B) Water legally released from storage.

(b) Attainment of the specified flow levels during some portions of the year will require development of water storage or implementation of other measures to augment flows.

(3) The minimum perennial streamflows established by the July 12, 1966 Mid-Coast Basin Program shall remain in effect over appropriations issued from July 12, 1966 to March 26, 1974.

[ED. NOTE: The Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 36, f. 7-27-66; WRB 59, f. 4-15-74; WRB 62, f. 3-26-75; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 4-1984, f. & cert. ef. 10-30-84; WRD 5-1987, f. & cert. ef. 5-20-87; WRD 20-1990, f. & cert. ef. 12-14-90, Renumbered from 690-080-0180

#### **690-518-0040**

##### **Storage**

All applications for appropriation of water for storage in structures impounding more than 3,000,000 gallons of water shall be reviewed by the Water Resources Commission prior to approval. During the review the Water Resources Commission may establish additional minimum flows on the natural flow of the stream to support aquatic life or minimize pollution.

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 36, f. 7-27-66; WRB 59, f. 4-15-74; WRB 62, f. 3-26-75; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 4-1984, f. & cert. ef. 10-30-84; WRD 5-1987, f. & cert. ef. 5-20-87; WRD 20-1990, f. & cert. ef. 12-14-90, Renumbered from 690-080-0180

#### **690-518-0050**

##### **Out-of-Basin Appropriations**

To support present and proposed Mid-Coast Basin water resource development, no out-of-basin appropriation of the waters of the Mid-Coast Basin shall be made or granted by any state agency or public corporation of the state without prior approval of, and following a public hearing by, the Water Resources Commission.

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 36, f. 7-27-66; WRB 59, f. 4-15-74; WRB 62, f. 3-26-75; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 4-1984, f. & cert. ef. 10-30-84; WRD 5-1987, f. & cert. ef. 5-20-87; WRD 20-1990, f. & cert. ef. 12-14-90, Renumbered from 690-080-0180

#### **690-518-0060**

##### **Water Quality**

Rights to use of water granted by any state agency in accordance with this water use program shall be issued only on the condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 36, f. 7-27-66; WRB 59, f. 4-15-74; WRB 62, f. 3-26-75; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 4-1984, f. & cert. ef. 10-30-84; WRD 5-1987, f. & cert. ef. 5-20-87; WRD 20-1990, f. & cert. ef. 12-14-90, Renumbered from 690-080-0180

# Attachment 11

**MUTUAL AGREEMENT AND ORDER FINAL: DEQ/WQ/RN-00405.doc (5/14/02)**  
**BEFORE THE ENVIRONMENTAL QUALITY COMMISSION**  
**OF THE STATE OF OREGON**  
**IN THE MATTER OF: MUTUAL AGREEMENT AND ORDER**  
**APPLICATION OF AQUATIC HERBICIDES**  
**NO. WQ/IW-HQ-02-**

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WHEREAS:

1. **IRRIGATION SYSTEMS.** The Oregon Water Resources Congress (OWRC), a statewide association representing local government water suppliers and irrigation districts, notified the Department of Environmental Quality (Department) in March 2001 that certain OWRC members need to apply aquatic herbicides containing acrolein and xylene to irrigation ditches to control noxious waterborne weeds. Since then other water suppliers and irrigation districts have also notified the Department of the need to apply aquatic herbicides containing copper compounds for the same purpose.

2. **HEADWATERS CASE.** Oregon Administrative Rule 340-045-0015(2) states that, "Without first obtaining an NPDES permit, no person shall discharge pollutants from a point source into navigable waters." In *Headwaters, Inc. v. Talent Irrigation District*, 243 F3d 526 (9th Cir Mar. 12, 2001), the Ninth Circuit United States Court of Appeals held that irrigation ditches are "waters of the United States" under the Clean Water Act. The Ninth Circuit also held that aquatic herbicides, such as acrolein, are "pollutants" at the time of application to the irrigation ditches. OWRC and the Department recognize that the anticipated application of acrolein and xylene described in Paragraph 1 would require a National Pollutant Discharge Elimination System (NPDES) permit from the Director under the Ninth Circuit decision in *Headwaters*. In addition, the Department recognizes that this decision may also apply to the application of copper compounds.

3. **UNIQUE CIRCUMSTANCES.** The Department recognizes that this discharge of aquatic herbicides does not lend itself to the normal process for obtaining an NPDES permit because of the unique circumstances created by the March 12, 2001, Ninth Circuit decision in *Headwaters* and the time and resources required to develop an NPDES permit program for aquatic herbicide application. In addition, the Department has been waiting for direction from the federal Environmental Protection Agency (EPA), which was expected to release its guidance regarding application of the court decision in December 2001. (Note: This guidance was issued on March 29, 2002, shortly after MAO was put out on public notice. EPA stated that the application of an aquatic herbicide consistent with the FIFRA label to ensure the passage of irrigation return flow falls within the exemption from NPDES permitting and is a nonpoint source activity, consistent with Congressional intent. However, there is still question as to the applicability of the irrigation return flow exemption to supply systems for irrigation water.)

4. **AUTHORITY.** Oregon Administrative Rule (OAR) 340-045-0062, adopted pursuant to ORS Chapter 468.020, states "The Director may issue a mutual agreement and order (MAO) in lieu of or in addition to an NPDES permit or a WPCF permit where the MAO is . . . for an activity that does not lend itself to the normal permitting process or permit term." The Department finds that issuance of this MAO satisfies the conditions set forth in OAR 340-045-0062.

5. **NOT AN NPDES PERMIT** This MAO is not a NPDES permit issued pursuant to the section 402 of the federal Clean Water Act and coverage under the MAO does not assure compliance with federal law.

6. **QUALIFIED RESPONDENTS.** The Department will make this MAO available to any irrigation district organized under ORS Chapter 545, water control district organized under ORS Chapter 553, drainage district organized under ORS Chapter 547, diking district organized under ORS Chapter 551, water improvement district organized ORS Chapter 552, and reclamation project subject to ORS Chapter 555 and to any other owner or operator of an Irrigation System that demonstrates to the Department's satisfaction that it has the financial and technical capability to comply with the MAO. The Respondent shall be responsible only for its own

compliance with this MAO and not for compliance by any other Respondent.

7. **PUBLIC NOTICE AND COMMENT.** The Department provided public notice of its intent to enter into these MAOs by providing at least 35 days for written comments and public hearings on April 24, 25 and 29, 2002.

**NOW THEREFORE, it is stipulated and agreed that:**

8. **CONDITIONS.** The Department will issue a final order requiring each Respondent, as defined below, to comply with the following conditions:

**A. Definitions.**

- i. **“Close” or “Closed”** means that there is no significant visible seepage of water from gates, valves and overflow structures in the Treatment Area to Natural Waters. Seepage is regarded as significant if the seepage is likely to result in concentrations of Regulated Herbicides in Natural Water downstream of the seepage at levels above the Restricted Water threshold. The gate or valve for a turnout to a lateral canal is considered “Closed” when flow to the lateral canal has been reduced to a level at which there is no visible flow in the lateral canal in the immediate vicinity of the turnout.
- ii. **“Closed System”** means a Treatment Area in an Irrigation System from which all flow into Natural Waters is Closed during application of Regulated Herbicides.
- iii. **“Irrigation System”** means a controlled system consisting primarily of manmade canals, ditches and ponds designed and operated for the delivery or management of water for irrigation purposes. This includes portions of natural streambeds used to deliver or manage irrigation water if, absent the irrigation flow, the streambeds are dry, intermittent, or otherwise do not provide natural fish habitat. Irrigation System also includes intersections between manmade irrigation canals and natural streams. Irrigation System does not include portions of natural streams (other than intersections) that are used to deliver irrigation water and that, absent the introduction of irrigation flow, have natural flow sufficient to provide fish habitat.
- iv. **“Licensed Applicator”** means a person licensed by the State of Oregon pursuant to ORS Chapter 634.106 to 634.146 634.106-634.146 to apply Aquatic Pest Control as specified in OAR 603-057-0110(2).
- v. **“Natural Waters”** means surface waters outside of an Irrigation System.
- vi. **“Open System”** means a Treatment Area in an Irrigation System from which flow to Natural Waters is not Closed during application of herbicides. Open Systems include Treatment Areas for which the flow to Natural Water is substantially reduced by gates, valves or dams, but for which significant visible seepage still occurs.
- vii. **“Public User”** means a water user served by an Irrigation System that is a public park, school or multifamily residential development (where the development is served in such a manner that all users may not be aware of application activities; e.g., mobile home park or residential subdivision).
- viii. **“Regulated Herbicides”** means acrolein, xylene, copper, and commercial products in which acrolein, xylene or copper are the principal active ingredient when these compounds or products are applied directly to water as an aquatic herbicide.
- ix. **“Respondent”** means a person satisfying the requirements of section 5 (p. 2) above who has paid the fees required by section 9 (p. 25) of this MAO, who has submitted a complete Respondent Signature Page pursuant to section 8 (p. 25) of this MAO, for whom the Department has accepted the Respondent Signature Page, and to whom the Environmental Quality Commission has directed the Order below.
- x. **“Respondent Signature Page”** means the page of this MAO on which a person wishing

to become a Respondent provides the requisite information and agrees to be bound by this MAO as a Respondent.

xi. **“Restricted Water”** means water in or from an Irrigation System after treatment with a Regulated Herbicide, if the water has concentrations of:

- a. Acrolein greater than or equal to 21 µg/l (based on OAR 340-041, Table 20 freshwater aquatic chronic toxicity criteria), or
- b. Xylene greater than or equal to 10 mg/l (based on the EPA-approved Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”) label and on the Safe Drinking Water Act Maximum Contaminant Level), or
- c. Total recoverable copper greater than or equal to 12 µg/L (based on OAR 340-41, Table 20 freshwater aquatic chronic toxicity criteria and an average hardness of 100 mg/L).

xii. **“Treatment Area”** means the area within an Irrigation System in which a Regulated Herbicide will be applied and to which it is intended or reasonably expected to migrate at levels that would constitute Restricted Water.

## **B. Public Notice Requirements.**

### **i. Notice of Intended Use.**

a. For every calendar year, prior to the Respondent’s first application of any Regulated Herbicide within the Respondent’s Irrigation System, the Respondent shall notify:

- (1) Each water user within its district (by general newsletter, special notice enclosed with a regular assessment, individual letter or publication in one or more newspapers with a combined circulation area encompassing the area in which the Irrigation System is located), and
- (2) The general public in the area served by the Respondent’s system (by publication in one or more newspapers with a combined circulation area encompassing the area in which the Irrigation System is located).

b. The Respondent shall include the following in the notice:

- (1) A statement of the Respondent’s intent to use Regulated Herbicides and general time period of expected use,
- (2) Identification of the Regulated Herbicides the Respondent intends to use,
- (3) A phone number that interested persons can call to get more information from the Respondent and instructions for how interested persons can request 24-hour advance notice from the Respondent before each application of a Regulated Herbicide.
- (4) For Public Users, a statement indicating that the Public User may request in writing that water deliveries during application of Regulated Herbicide be stopped.

c. The Respondent shall provide 24 hour notice according to paragraph 8.B.ii (p. 7) below to any person who makes a written request to the Respondent to be notified of a Regulated Herbicide application and provides the Respondent an e-mail address for such notice. Any person who is unable to provide the Respondent an e-mail address, may contact the Respondent by telephone, and the Respondent shall provide the caller with its most current application schedule, which may be subject to change, for at least the next 48 hours.

d. The Respondent shall maintain a copy of the general notification(s) as provided in subsection 8.G (p. 19) of this MAO.

### **ii. 24 Hour Notice.**

a. At least 24 hours prior to application of a Regulated Herbicide, the Respondent shall notify the Department, the Oregon Department of Fish and Wildlife (ODFW) and any person who has requested advance notice as provided in paragraph 8.B.i (p. 5) of the scheduled date and time of the application and the Treatment Area for the application. The Respondent may limit its notice



to interested persons to only those persons who have provided an e-mail address for such notice.

b. The Respondent shall provide notice to the Department by telephone or fax during business hours (8 a.m. to 5 p.m.) to the regional office of the Department and ODFW for the region in which the Respondent's Irrigation System is located as follows:

**County DEQ Regional Office Telephone**

Clackamas, Clatsop, Columbia, Multnomah, Tillamook, Washington

Northwest Region (503) 229-5263

(503) 229-6945 fax

Benton, Lincoln, Linn, Marion, Polk, Yamhill

Western Region - Salem (503) 378-8240

(503) 373-7944 fax

Lane Western Region - Eugene (541) 686-7838

(541) 686-7551

Douglas Western Region - Roseburg (503) 440-3338

(503) 440-3396 fax

Jackson, Josephine Western Region - Medford (541) 776-6010

(541) 776-6262 fax

Coos, Curry Western Region - Coos Bay (541) 269-2721

(541) 269-7984 fax

Baker, Gilliam, Grant, Malheur, Morrow, Umatilla, Union, Wallowa, Wheeler

Eastern Region - Pendleton Office

(541) 276-4063

(541) 278-0168 fax

Crook, Deschutes, Harney, Hood River, Jefferson, Klamath, Lake, Sherman, Wasco

Eastern Region - Bend

Office

(541) 388-6146

(541) 388-8283 fax

**ODFW Regional Office Telephone**

Northwest Region (503) 657-2000

Southwest Region (541) 440-3353

(541) 673-0372 fax

High Desert Region (541) 388-6363

**ODFW Regional Office Telephone**

(541) 388-6261 fax

Northeast Region (541) 963-2138

(541) 963-6670 fax

**C. Required Best Management Practices.**

**i. General Requirements.**

a. **FIFRA Label.** The Respondent shall apply Regulated Herbicides only in compliance with this MAO and the label instructions provided by the manufacturer or distributor of the Regulated Herbicide and approved by EPA under FIFRA.

b. **Licensed Applicator.** The Respondent must ensure the following:

Regulated Herbicide will be applied only by a Licensed Applicator. The Licensed Applicator must be licensed under OAR Chapter 603, Division 057. The Licensed Applicator also must

have successfully completed at least 8 credit hours of pesticide training sessions accredited by the Oregon Department of Agriculture within the preceding 12 months or 40 credit hours within the preceding five years. The Licensed Applicator must be familiar with the application requirements and risks for the Regulated Herbicide.

c. **Herbicide Use Reduction.** In order to reduce the total amount of Regulated Herbicide applied to its Irrigation Systems, the Respondent shall apply Regulated Herbicides only as needed. Acrolein-based herbicides may be applied only when the size of pondweed or other aquatic plants have reached an average length of 3 to 6 inches or floating or non-floating masses of algae are visible. Xylene-based herbicide may be applied only when plant growth in the Treatment Area restricts water flow to the extent that water cannot be delivered consistent with good water supply management. Copper-based herbicides may only be applied when weeds are present. Prior to applying a Regulated Herbicide, the Respondent shall inspect the Irrigation System for plant growth and document in its application log that plant growth has reached the levels described above. The Respondent shall document this inspection in its application log.

d. **Treatment Area.** The Respondent shall size the Treatment Area, adjust system flow and determine the application rate based on the inspection required by subparagraph 8.C.i.c (p. 8) above.

e. **Application Limited to Irrigation Systems.** The Respondent shall ensure that all applications of Regulated Herbicides are made to Irrigation Systems in which water is intended for irrigation purposes, and shall not apply Regulated Herbicides to Natural Waters. Regulated Herbicides may not be applied upstream of any delivery point for water used for potable purposes.

ii. **Requirements for Closed Systems**

a. **Pre-season Inspection.** Prior to the first application of a Regulated Herbicide pursuant to this MAO, the Respondent shall inspect all gates, valves and overflow structures in its Irrigation System that allow discharge to Natural Waters. It also shall inspect all gates, valves and overflow structures at turnouts to any lateral canal if the lateral canal has downstream locations that cannot be Closed to Natural Waters. The Respondent shall repair any gates, valves or overflow structures that allow significant visible seepage of water when Closure is attempted. The Respondent shall document this inspection and any repairs in its application log.

b. **Pre-application Steps.** Prior to each application of a Regulated Herbicide, the Respondent shall:

(1) Close and lock (if the structure is designed to accommodate a lock) all gates, valves and overflow structures within the Treatment Area that discharge to Natural Waters. For any lateral canal that may discharge to Natural Water, either the point of discharge to Natural Water must be Closed or the turnout to the lateral canal from the main canal must be Closed.

(2) Within the Treatment Area, Close and lock (if the structure is designed to accommodate a lock) the delivery point for any Public User that requested in writing that its water deliveries be stopped during application of Regulated Herbicides. If the delivery point cannot be Closed, the Respondent shall contact the Public User and make other arrangements to ensure that the Public User does not receive Restricted Water.

(3) Attach an easily visible tag to each Closed gate, valve, overflow structure and Public User delivery point. For gates, valves and overflow structures, the tag must state that the gate, valve or overflow structure has been Closed to prevent discharge of herbicides to Natural Waters and that the gate, valve or overflow structure may be reopened only by the Respondent's personnel. For Public User delivery points, the tag must state that the delivery point has been Closed at the

request of the Public User and may be reopened only by the Respondent's personnel.

(4) Reduce water flow in the Treatment Area to match the targeted rate for water use during the treatment period so as to avoid the need for overflow to Natural Water. The Respondent shall document this procedure in its application log.

**c. Requirements While Restricted Water is Present.**

(1) During the period that Restricted Water is present in its Irrigation System, the Respondent shall inspect:

(i) Each Closed gate, valve and overflow structure in the Treatment Area at least once each day to ensure that it remains Closed and does not have significant seepage, and the Respondent shall document this inspection in its application log.

(ii) Public User delivery points at least once a day that have been Closed as requested by the Public User. Gates, valves, overflow structures and Public User delivery points that have been Closed and locked are not subject to the daily inspection requirement.

(2) During the period that Restricted Water is present in its Irrigation System, the Respondent shall manage the water flow in the Treatment Area to prevent the need for overflow to Natural Waters.

**d. Determination that Restricted Water is No Longer Present.**

(1) Following treatment, the Respondent shall continue to comply with subparagraph 8.C.ii.c (p. 11) above and ensure that the Treatment Area remains Closed until Restricted Water is no longer present. The determination that Restricted Water is no longer present must be made by one of the following means:

(i) The Respondent may collect and analyze representative samples of water from the Treatment Area consistent with the requirements of this MAO. The Respondent may not open the Treatment Area until the sample results show that Restricted Water is no longer present;

(ii) For acrolein based Regulated Herbicides, the Respondent may wait for expiration of the holding period of 6 days as specified in the EPA-approved FIFRA label for acrolein; or

(iii) The Respondent may calculate the rate at which the entire volume of water in the Treatment Area is replaced by fresh water or is "turned over" based on the portion of the Treatment Area where turnover is the slowest. The Respondent may not open the Treatment Area until the water in the Treatment Area has turned over at least two times.

The above determinations may be made for the entire Treatment Area, for an individual lateral canal or for the portion of the Treatment Area upstream of a particular gate, valve or overflow structure.

(2) The Respondent may not open gates, valves and overflow structures to Natural Waters or resume normal water flows for the entire Treatment Area or portion of the Treatment Area, as applicable until Restricted Water is no longer present.

(3) When gates, valves, overflow structures, or Public User delivery points are opened, the Respondent shall remove the warning tags.

**iii. Requirements for Open Systems**

**a. Pre-season Inspection.** Prior to the first application of a Regulated Herbicide pursuant to this MAO, the Respondent shall inspect:

(1) All gates, valves, and overflow structures in its Irrigation System that allow discharge to Natural Waters.

(2) All gates, valves and overflow structures at turnouts to any lateral canal if the lateral canal has downstream locations that cannot be Closed to Natural Waters. To the extent practicable, the Respondent shall repair any gates, valves or overflow structures that allow flow or significant

visible seepage of water when Closure is attempted. The Respondent shall document this inspection and any repairs in its application log.

**b. Pre-application Steps.** Prior to each application of a Regulated Herbicide, the Respondent shall:

(1) Reduce water flow in the Treatment Area to match the target rate for water use during the treatment period so as to minimize the need for overflow to Natural Water consistent with good water supply management. The Respondent also shall reduce flow to Natural Waters to the extent reasonably practicable, consistent with good water supply management, by Closing and locking (if the structure is designed to accommodate a lock), or otherwise reducing flow through, all gates, valves or overflow structures within the Treatment Area for overflow structures that may discharge to Natural Waters. For any lateral canal that may discharge to Natural Water, either the point of discharge must be Closed or the turnout to the lateral canal from the main canal must be Closed, unless the discharge point from the lateral canal meets the requirements set forth in subparagraph 8.C.iii.c (p. 14) below. The Respondent shall document its flow reduction procedure in its application log.

(2) Within the Treatment Area, Close and lock (if the structure is designed to accommodate a lock) the delivery point for any Public User that requested in writing that its water deliveries be stopped during application of Regulated Herbicides. If the delivery point cannot be Closed, the Respondent shall contact the Public User and make other arrangements to ensure that the Public User does not receive Restricted Water.

(3) Attach an easily visible tag to each Closed gate, valve, overflow structure and Public User delivery point. For gates, valve and overflow structures, the tag must state that the gate, valve or overflow structure has been Closed to prevent discharge of herbicides to Natural Waters and that the gate, valve or overflow structure may be reopened only by the Respondent's personnel. For Public User delivery points, the tag must state that the delivery point has been Closed at the request of the Public User and may be reopened only by the Respondent's personnel.

**c. Requirements for Discharge Points.** Prior to each application of a Regulated Herbicide, the Respondent shall ensure that one of the following is satisfied for each point where flow or significant visible seepage occurs from the Treatment Area and may reach a Natural Water:

(1) The flow or seepage is either to a ditch or water course that is dry or almost dry (e.g., only moist soil or small pools of water remain) and it will not flow to any Natural Water; or

(2) The Respondent has established a containment and recovery system, such as a sump and pump system, to capture Restricted Water that would otherwise reach Natural Waters and return that captured Restricted Water to the Irrigation System.

**d. Requirements While Restricted Water is Present.** During the period that Restricted Water is present in its Irrigation System, the Respondent shall inspect:

(1) Each Closed gate, valve and overflow structure in the Treatment Area at least once each day to ensure that it remains Closed and does not have significant visible seepage, and the Respondent shall inspect each point with flow or significant visible seepage to ensure that flow or seepage is minimized to the extent consistent with good water supply management.

(2) Public User delivery points at least once a day that have been Closed as requested by the Public User. Gates, valves, overflow structures and Public User delivery points that have been Closed and locked are not subject to the daily inspection requirement. The Respondent shall document such inspection in its application log. During the period that Restricted Water is present in its Irrigation System, The Respondent shall manage the water flow in the Treatment Area to minimize the need for overflow to Natural Waters consistent with good water supply

management.

**e. Determination that Restricted Water is No Longer Present.**

(1) Following treatment, the Respondent shall continue to comply with subparagraph 8.C.iii.d (p. 15) above for the Treatment Area until Restricted Water is no longer present. The determination that Restricted Water is no longer present must be made by one of the following means:

(i) The Respondent may collect and analyze representative samples of water from the Treatment Area consistent with the requirements of this MAO. The Respondent may not open the Treatment Area until the sample results show that Restricted Water is no longer present; or (ii) For acrolein based Regulated Herbicides, the Respondent may wait for expiration of the holding period of 6 days as specified in the EPA-approved FIFRA label for acrolein.

The above determinations may be made for the entire Treatment Area, for an individual lateral canal or for the portion of the Treatment Area upstream of a particular gate, valve or overflow structure.

(2) The Respondent may not open gates, valves and overflow structures to Natural Waters and resume normal water flows until Restricted Water is no longer present for the entire Treatment Area or portion of the Treatment Area, as applicable.

(3) When gates, valves or overflow structures, or Public User delivery points are opened, the Respondent shall remove the warning tags.

**D. Monitoring.** For purposes of determining that Restricted Water is no longer present in the Treatment Area or some portion of the Treatment Area, the Respondent shall collect and analyze samples from the Treatment Area as follows:

i. **Time.** The Respondent shall calculate the transit time for Restricted Water to travel from the point of application of the Regulated Herbicide to the sampling point. This calculation must take into consideration the concentration and duration at which the Regulated Herbicide is applied, the volume and velocity of flow in the relevant portion of the Irrigation System and the distance Restricted Water will flow between the point or points where the Regulated Herbicide is applied and the sampling point. All samples must be taken at least two hours after the applicable transit time has elapsed from the time the Regulated Herbicide was last applied.

**ii. Location and Number of Samples.**

a. **Entire Treatment Area.** In order to document that the entire Treatment Area does not contain Restricted Water, the Respondent shall collect and analyze at least two samples from the Treatment Area:

(1) One sample must be collected at least 100 feet upstream of the last open delivery point within the Treatment Area (a delivery point is a point in the Irrigation System where water is being withdrawn for use).

(2) One sample must be collected at the midpoint between the most downstream point in the Treatment Area and the last point at which the Regulated Herbicide was applied.

b. **Limited Portion of Treatment Area.** If the Respondent desires to open some portion of the Treatment Area before the entire Treatment Area is free of Restricted Water, the Respondent shall collect a sample immediately upstream of the gate, valve or overflow structure to be opened or follow other procedures in 8.C.ii.d (p. 9) or 8.C.iii.e. (p. 16) for determining that Restricted Water is no longer present.

iii. **Type.** Samples must be grab samples collected from below the surface near the center of the canal or at least two feet from the bank of the canal.

iv. **Methods.** Samples must be analyzed using EPA Method 8260B/5030B with results reported for acrolein if an acrolein-based herbicide is used, or total xylenes (m-xylene, o-xylene and p-

xylene), if a xylene-based herbicide is used, unless otherwise approved in writing by the Department. When using a copper-based herbicide, samples must be analyzed using test procedures approved under 40 CFR §136 with results reported for total recoverable copper, unless otherwise approved in writing by the Department.

**E. Emergency Response and Written Contingency Plan.**

In the event of a release of Regulated Herbicide into an Irrigation System or Natural Waters other than as authorized by this MAO, the Respondent shall:

- i. Immediately take emergency measures to contain the release and recover the released herbicide or to otherwise reduce the concentration of the released herbicide in the water.
- ii. Maintain emergency measures until samples have been collected and analyzed to confirm that the herbicide is no longer present above the threshold concentrations for Restricted Water.
- iii. Comply with the reporting requirements set forth in subsection 8.H below (p. 22).
- iv. Implement their written contingency plan. The Respondent shall have a written contingency plan describing emergency measures to be taken in the event of a release. The plan must include:
  - a. Emergency phone numbers for the Department,
  - b. Name and telephone number of a hazardous material response contractor, and
  - c. Name, address, and telephone numbers of nearest hospitals to the Irrigation System.

The Respondent must ensure that the Licensed Applicator has a copy of the contingency plan on site during application of Regulated Herbicides.

**F. Designated Contact.** The Respondent's designated contact must be the person identified by the Respondent on its Respondent Signature Page.

**G. Record Keeping.** The Respondent shall prepare and maintain records as follows:

- i. **Application Log.** For both Open and Closed Systems, the Respondent shall prepare and maintain an application log that includes the following information:
  - a. Prior to the first application of a Regulated Herbicide, documentation of the inspection and repair of all gates, valves and overflow structures in the Respondent's Irrigation System as provided in subparagraphs 8.C.ii.a (p. 19) or 8.C.iii.a (p. 13). The documentation must include the following:
    - (1) The date (mm/dd/yy) of the inspection.
    - (2) The name of the person making the inspection.
    - (3) The area of the Respondent's Irrigation System being inspected.
    - (4) A list of each gate, valve and overflow structure inspected, a description of any repairs required, and confirmation that such gate, valve or overflow structure was repaired.
  - b. For each application of a Regulated Herbicide, the Respondent shall record and maintain the following:
    - (1) The Respondent's name and address.
    - (2) Date (mm/dd/yy) and approximate time of application.
    - (3) The general location of the Treatment Area.
    - (4) The type of equipment used for application.
    - (5) The name of the person who supplied the Regulated Herbicide.
    - (6) The name of the Regulated Herbicide, including the full name listed on the label, the company name and any descriptive words on formulation or usage including the strength.
    - (7) The Regulated Herbicide's EPA Registration Number.
    - (8) The amount of Regulated Herbicide applied prior to dilution estimated to the tenths of the

most appropriate unit (ounce, pound, pint, quart or gallon).

(9) The approximate location of the land or property on which the Regulated Herbicide was applied.

(10) The name of the Licensed Applicator who applied the Regulated Herbicide and the applicator's license number.

(11) Whether the Treatment Area is a Closed or Open System.

(12) Documentation that the Respondent provided at least 24 hours advance notice of application pursuant to subsection 8.B (p. 5).

(13) Documentation that, prior to application, the Respondent inspected the Treatment Area and that the aquatic plants and/or algae growth meet the growth criteria pursuant to subparagraph 8.C.i.c (p. 8). The documentation must include the date of the inspection and the name of the person making the inspection.

(14) Documentation that, prior to application, the Respondent inspected and Closed all gates, valves and overflow structures within the Treatment Area pursuant to subparagraphs 8.C.ii.b (p. 10) or 8.C.iii.b (p. 13). The Respondent shall also document any subsequent daily inspections made during the period the Restricted Water remained present in the Treatment Area as required pursuant to subparagraph 8.C.ii.c (p. 11) or 8.C.iii.d (p. 15). The documentation must include the following information for each inspection:

(i) The date (mm/dd/yy) of the inspection.

(ii) The name of the person making the inspection.

(iii) The approximate location and/or identifying description of each gate, valve and overflow structure inspected within the Treatment Area and confirmation that such gate, valve or overflow structure was Closed and tagged.

(15) If the Respondent relies upon sampling and analysis to determine that Restricted Water is no longer present in the Treatment Area pursuant to clauses 8.C.ii.d(1) (p. 12) or 8.C.iii.e(1) (p. 16), the Respondent shall record and maintain the sampling and analysis data relied upon.

If the Respondent relies on calculated turnover to determine that Restricted Water is no longer present in the Treatment Area pursuant to clause 8.C.ii.d(1)(iii) (p. 12), the Respondent shall record and maintain the calculations demonstrating that the required turnover occurred.

ii. **Additional Requirements for Open Systems.** In addition to the requirements in paragraph 8.G.i (p. 19) above, if the Treatment Area is within an Open System, the Respondent shall, prior to each application, prepare and maintain in its Application Log documentation that the Respondent has met the requirements under subparagraph 8.C.iii.c. (p. 14) where flow or significant visible seepage occurs from the Treatment Area to a Natural Water.

iii. **Applicator's License.** The Respondent shall maintain copies of each Licensed Applicator's license, certification and training information as required pursuant to paragraph 8.A.iv (p. 4) and subparagraph 8.C.i.b (p. 8).

iv. **General Notification.** The Respondent shall maintain a copy of the general notification to the public of their right to receive advance notice as well as any written requests to receive such notice as provided in subsection 8.B (p. 5).

v. **Records Maintenance Period.** The Respondent shall maintain these records for a period of at least three years from the date of application of the Regulated Herbicide, and shall make the records available for review and inspection by the Department pursuant to section 11 (p. 26).

#### **H. Reporting Requirements.**

i. **Regulated Herbicide Use Report.** The Respondent shall prepare and submit annually a report to the Department that documents the Respondent's use of Regulated Herbicides pursuant

to this MAO.

a. The report must include the following information:

(1) The Respondent's name and address.

(2) A description of the location of the Irrigation System.

(3) The targeted plant(s).

(4) The dates of applications of the Regulated Herbicides.

(5) For each Regulated Herbicide used, the name of the Regulated Herbicide, including the full name listed on the label, the company name, any descriptive words on formulation or usage and the Regulated Herbicide's EPA Registration Number.

(6) For each Regulated Herbicide used, the total amount of Regulated Herbicide applied from January 1 to December 31 prior to dilution estimated to the tenths of the most appropriate unit (ounce, pound, pint, quart, gallon, or metric measure).

b. In addition to the information required in subparagraph 8.H.i.a (p. 22) above, the report shall include any sampling and analysis data that the Respondent relied upon to open any portion of the Treatment Area before the holding period described in the definition of Restricted Water has lapsed as allowed by this MAO pursuant to subsection 8.D (p. 17) and paragraph 8.C.ii.d (p. 11) or subparagraph 8.C.iii.e (p. 16).

c. The Respondent shall submit the Regulated Herbicide Use Report to the Department annually on or before December 31.

ii. **Reporting of Incidents.**

a. Upon becoming aware of any discharges to Natural Waters in connection with the Respondent's Irrigation System in excess of the levels that constitute Restricted Water or of any spill requiring reporting under OAR Chapter 340, Division 108, the Respondent shall immediately (i.e., as soon as possible but in no case more than one hour after becoming aware of the excess discharge period) notify the Department by telephone or in person.

b. The Respondent also shall immediately notify the Department upon becoming aware of any distressed fish, fish mortality or distressed vegetation in any Natural Water that receives flow from the Respondent's Irrigation System.

c. Follow-up reporting must be made in accordance with Department direction.

d. Notification during nonbusiness hours, weekends, or holidays must be made by the Respondent to the Oregon Emergency Response System, the current telephone number of which is 1-900-452-4011.

e. Notification during business hours must be made by the Respondent to the Department's regional office as follows:

**County DEQ Regional Office Telephone**

Clackamas, Clatsop, Columbia, Multnomah, Tillamook, Washington

Northwest Region (503) 229-5263

(503) 229-6945 fax

Benton, Lincoln, Linn, Marion, Polk, Yamhill

Western Region - Salem (503) 378-8240

(503) 373-7944 fax

Lane Western Region – Eugene

(541) 686-7838

(541) 686-7551

**County DEQ Regional Office Telephone**

Douglas Western Region - Roseburg



(503) 440-3338  
(503) 440-3396 fax  
Jackson, Josephine Western Region - Medford  
(541) 776-6010  
(541) 776-6262 fax  
Coos, Curry Western Region – Coos Bay  
(541) 269-2721  
(541) 269-7984 fax  
Baker, Gilliam, Grant, Malheur, Morrow, Umatilla, Union, Wallowa, Wheeler  
Eastern Region – Pendleton Office  
(541) 276-4063  
(541) 278-0168 fax  
Crook, Deschutes, Harney, Hood River, Jefferson, Klamath, Lake, Sherman, Wasco  
Eastern Region – Bend Office  
(541) 388-6146  
(541) 388-8283 fax

## **ADDITIONAL CONDITIONS**

9. **JOINING THIS MAO.** Any owner or operator of an Irrigation System who satisfies the requirements of section 5 (p. 2) of this MAO, wishes to apply Regulated Herbicides and is willing to comply with the terms of this MAO may become a Respondent under this MAO. A person may become a Respondent by paying the fees required by section 9 (p. 25) and completing and executing the Respondent Signature Page and delivering it to the Department at the following address:

Department of Environmental Quality  
811 SW Sixth Avenue  
Portland, OR 97204  
Attn: Ranei Nomura

This MAO will become effective with respect to a Respondent upon the Department's acceptance of the required fees and approval of the Respondent Signature Page and execution of the Order by the Environmental Quality Commission.

10. **PAYMENT OF FEES.** Each person desiring to become a Respondent under this MAO shall deliver to the Department the following fees: a Filing Fee pursuant to OAR 340-045-0075(1), an Application Processing Fee pursuant to OAR 340-045-0075(2)(h)(D) and, for the first year of operation, an Annual Compliance Determination Fee pursuant to OAR 340-045-0075(4)(b)(R). For the summer of 2002, the Filing Fee is \$60, the Application Processing Fee is \$280, and the Annual Compliance Determination Fee is \$330. The Department will not accept the Respondent Signature Page and this MAO will not become effective with respect to any person until such fees are received by the Department. All fees must be made payable to "Department of Environmental Quality" and delivered to: Attn: Ranei Nomura, Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204. The Department will invoice the Respondent for the Annual Compliance Determination Fee that is due for each year during which the MOA is in effect. Failure of the Respondent to timely pay the fee terminates the MAO, as of the date the fee was due.

11. **WAIVER.** The Respondent waives any and all rights and objections it may have to the form, content, manner of service or timeliness of this MAO. The Respondent acknowledges that it

has actual notice of the contents and requirements of this MAO and that failure to fulfill any of the requirements hereof would constitute a violation of this MAO and subject the Respondent to payment of civil penalties.

12. **ACCESS.** The Respondent shall allow the Department's representatives access to the Respondent's property and pertinent records at all reasonable times for the purposes of making inspections, surveys, collecting samples, obtaining data, reviewing and copying required records and otherwise conducting all necessary functions related to this MAO in accordance with ORS Chapter 468.095.

13. **STIPULATED PENALTIES.** Upon receipt of a written Penalty Demand Notice from the Department, the Respondent shall pay a civil penalty for each day of each violation of any requirement or condition of this MAO, calculated under OAR 340-012-0045 with the following stipulations:

A. Violations of paragraphs B. i (p. 5) and B. ii (p. 7), subparagraphs C.ii.a (p. 19), C.ii.b (p. 10), C.ii.c (p. 11), C.iii.a (p. 13), C.iii.b (p. 13), and C.iii.d (p. 15), and subsections D (p. 17), G (p. 19), and H (p. 22) of section 8 are considered Class II violations;

B. Violations of subparagraphs C.i.a (p. 8), C.i.b (p. 8), C.i.c (p. 8), C.i.d (p. 9), C.i.e (p. 9), C.ii.d (p. 11), C.iii.c (p. 14), C.iii.e (p. 16), and E (p. 18) of section 8 are considered Class I violations;

C. Any violation resulting or contributing to the death of any fish will be assigned a magnitude of major; any violation that did not make the release of pesticide or pesticide residue to Natural Water more likely will be assigned a magnitude of minor; all other violations will be assigned a magnitude of moderate;

D. The Department will use the following factors under OAR 340-012-0045(1)(c): a value of 0 for prior significant actions, 0 for correcting or taking actions to minimize prior significant actions, 0 for occurrence, 0 for means read and -2 for cooperativeness. The Department will have discretion to determine on a case by case basis whether to consider economic benefit when calculating the civil penalty;

E. The Department may elect to assess a penalty under OAR 340-012-0049 based on violation of the water quality statute or rules.

14. **FORCE MAJEURE.** If any event occurs that is beyond the Respondent's reasonable control

and causes or may cause a delay or deviation in the Respondent's performance of the requirements of this MAO, the Respondent shall immediately notify the Department by telephone of the cause of delay or deviation and its anticipated duration, the measures that have been or will be taken to prevent or minimize the delay or deviation, and the timetable by which the Respondent proposes to carry out such measures. The Respondent shall confirm in writing to the Department this information within five working days of the onset of the event. The delay or deviation must be caused by circumstances beyond the control and despite due diligence of the Respondent, and the Respondent must explain in the written notification to the Department's satisfaction that this is the case. If the Respondent so demonstrates, the Department will extend times of performance of related activities under this MAO as appropriate. Circumstances or events beyond the Respondent's control include, but are not limited to, acts of nature, unforeseen strikes, work stoppages, fires, explosion, riot, sabotage, flood or war. Increased cost of performance or consultant's failure to provide timely reports may not be considered circumstances beyond the Respondent's control.

15. **PAYMENT OF PENALTIES.** Any stipulated civil penalty imposed pursuant to section 13

(p. 26) will be due upon written demand. Stipulated civil penalties must be paid by check or money order made payable to the "State Treasurer, State of Oregon" and sent to: Business Office, Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204. Within 21 days of receipt of a "Demand for Payment of Stipulated Civil Penalty" Notice from the Department, the Respondent may request a hearing to contest the Demand Notice. At any such hearing, Respondent shall not contest any of the stipulations set forth in section 13 (p. 26).

16. **MODIFICATION.** The Department may amend the conditions in this MAO upon finding that such modification is necessary because of changed circumstances or to protect public health and the environment. If the Respondent contests the Amended Order the applicable procedures for conduct of contested cases in such matters will apply.

17. **TERM.** The term of this MAO becomes effective for the Respondent on the date that the Environmental Quality Commission executes the final order and will terminate on December 31, 2004, or upon the issuance date of an individual NPDES permit or the date when coverage under a general NPDES permit is required or obtained, whichever is sooner. However, the provisions requiring payment of stipulated civil penalties for which a penalty demand is made will continue until such payment is made. Records required by this MAO must also be maintained for a period of at least three years from the date of application of the Regulated Herbicide.

18. **BINDING EFFECT.** This MAO will be binding on the parties and their respective successors, agents, and assigns. The undersigned representative of each party certifies that he or she is fully authorized to execute and bind such party to this MAO. No change in ownership or corporate or partnership status relating to the Respondent will in any way alter the Respondent's obligations under this MAO, unless otherwise approved in writing by the Department.

19. **RESERVATION OF RIGHTS.** This MAO is not intended to limit, in any way, the Department's right to proceed against the Respondent in any forum for any past or future violations by the Respondent.

DEPARTMENT OF ENVIRONMENTAL QUALITY

5/16/02 *signed by Stephanie Hallock*

Date Stephanie Hallock, Director

## **RESPONDENT SIGNATURE PAGE**

RESPONDENT'S Name:

Mailing Address:

Please attach a general description of the Irrigation System that includes the following information:

1. Water withdrawal source.
2. Estimated miles of canal.
3. Estimated type and acres of crops irrigated.
4. Estimated percentage of type of irrigation systems such as drip, flood or sprinkler irrigation.
5. Aquatic herbicides proposed to be used and estimated quantities.
6. Whether the system is likely to be operated as "Closed" or "Open" as defined by the MAO during aquatic herbicide applications. Also provide a local map showing the boundaries of the Respondent's district with the general location of major canals.

RESPONDENT'S Designated Contact:

Name:

Mailing Address:

E-mail Address:

Telephone/Fax:

The undersigned RESPONDENT agrees to be bound by the terms of this MAO and to apply Regulated Herbicides only in compliance with this MAO.

(printed name of RESPONDENT)

By:

(date) (name)

(title)

ACCEPTED by the DEPARTMENT OF ENVIRONMENTAL QUALITY

By:

(date) (name)

(title)

### **FINAL ORDER**

IT IS SO ORDERED: ENVIRONMENTAL QUALITY COMMISSION

(date) Stephanie Hallock, Director

Department of Environmental Quality

Pursuant to OAR 340-011-0136(1)